TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 599

McCORMICK & COMPANY, INC., AND DURHAM BROS., INC., APPELLANTS,

vs.

W. G. BROWN, STATE COMMISSIONER OF PROHIBITION OF THE STATE OF WEST VIRGINIA, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

FILED DECEMBER 29, 1931

(36,413)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 20, 1932

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[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, SOUTHERN WEST VIRGINIA

In Equity. No. 2866

McCormick & Co., Inc., a Corporation, and Durham Bros. Co., Inc., a Corporation, Plaintiffs,

vs.

W. G. Brown, State Commissioner of Prohibition of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, Defendants

Bill of Complaint—Filed Dec. 24, 1930

[fol. 2] To the Honorable George W. McClintic, Judge of the District Court of the United States for the Southern District of West Virginia:

I

The plaintiff, McCormick & Co., Inc., is a corporation organized under the laws of the State of Maryland, having its principal office and place of business in the City of Baltimore in said state, and the plaintiff, Durham Bros. Co., Inc., is a corporation organized under the laws of the State of Virginia, and having its principal office and place of business in the City of Roanoke in said state. They file this bill of complaint on their own behalf and for the benefit of numerous other non-residents of the State of West Virginia, all of whom (including the plaintiffs) are manufacturers of and/or wholesale dealers in commercial products containing as a necessary solvent or preservative ethyl alcohol, which products are used and usable exclusively for medicinal, mechanical, toilet and culinary purposes, and which are manufactured and sold under permits issued by the United States Bureau of Industrial Alcohol and approved by the United States Bureau of Prohibition, and none of which products are intoxicating liquors or fit for beverage purposes within the meaning of the laws of the United States. All of said manufacturers and/or

wholesale dealers, including the plaintiffs named herein, desire to ship said products from without the state of West Virginia to purchasers within said state for resale for the uses and purposes aforesaid.

Plaintiffs say that the question or questions here involved are of common or general interest to all of the persons, firms and corporations for whose benefit this suit is brought, and that said persons, firms and corporations constitute a class so numerous as to make it impracticable to bring them all before this Court; said persons, firms and corporations being more than 250 in number; and for said reasons the plaintiffs file this bill on behalf of all members of said class, as provided by the equity rules of the courts of the United States.

The defendant, W. G. Brown, is the regularly appointed State Commissioner of Prohibition of the State of West Virginia, who is charged with the duty of superintending [fol. 3] the enforcement of the laws of said state with respect to the manufacture, possession and sale of intoxicating liquors. The defendant, Howard B. Lee, is the regularly elected and qualified Attorney General of the State of West Virginia, who is charged with the duty of enforcing the laws of the State of West Virginia, including particularly the laws relating to the manufacture, possession and sale of intoxicating liquors. Both defendants are residents of the State of West Virginia and of the Southern district thereof.

II

Plaintiffs are advised and charge that this Court has jurisdiction of this suit for the following reasons:

(1) The plaintiffs and the defendants are, respectively, citizens of different states as hereinbefore shown.

(2) The matter in controversy arises under the constitution and laws of the United States, and, exclusive of interest and costs, exceeds the sum or value of $3,000.00.

(3) Plaintiffs seek in this suit to redress the deprivation, under color of unlawful regulations by the defendant W. G. Brown, of rights, privileges and immunities secured to the plaintiffs by the constitution of the United States, to-wit,

the right to ship and transport the said products manufactured and/or sold by them in interstate commerce free from unlawful restriction or regulation by said defendant Brown.

III

Plaintiff McCormick & Co., Inc., owns and operates, and for more than forty years has operated, in the City of Baltimore, Maryland, a plant for the manufacture of various products sold and used for toilet and culinary purposes. In addition to its manufacturing department, said plaintiff also maintains an extensive marketing organization, employing salesmen and special representatives who take orders for sales and deliveries to wholesale and retail dealers in practically all parts of the United States. [fol. 4] Many of the products manufactured by said plaintiff contain no ethyl alcohol whatsoever, but approximately twenty-five per cent thereof, as measured by the sale price of said products, consists of food stuffs and toilet articles containing from four per cent to ninety per cent ethyl alcohol by volume. The value of such food stuffs and toilet articles containing ethyl alcohol sold and transported into the State of West Virginia during the year 1929 was approximately Thirteen Thousand Dollars ($13,000.00), and during the first nine months of the year 1930, approximately Eight Thousand Dollars ($8,000.00).

Under the provisions of the National Prohibition Act of the United States, and Acts of Congress amending the same, said plaintiff, in order to manufacture, transport and sell said products containing ethyl alcohol, is required to have issued to it a permit authorizing it to manufacture, transport and sell products for use for medicinal, mechanical, toilet and culinary purposes, provided that the same are determined by the issuing authority to be unfit for use for beverage purposes. Prior to July 1, 1930, such permits were granted by the Commissioner of Internal Revenue of the United States, but by the Act of Congress effective on said date, the provisions of said National Prohibition Act were amended so as to provide that all such permits were thereafter to be issued by the Bureau of Industrial Alcohol, subject to the approval of the Attorney General of the United States.

For more than ten years said plaintiff has been operating its business under successive annual permits authorizing it to withdraw and use intoxicating liquors, including principally ethyl alcohol for use in the manufacture of said products in compliance with said National Prohibition Law. A photostatic copy of the current permit is exhibited herewith, designating "Plaintiffs' Exhibit A". In addition to said basic permit, said plaintiff, from time to time has applied for and has had issued to it, a supplemental permit for the manufacture of each specific product formulated by it, certifying that the same has been determined by said issuing authority to comply with all of the provisions of the [fol. 5] National Prohibition Law. At the present time, said plaintiff is engaged in the business of manufacturing and selling many of the products approved in said permits, which products are unfit for beverage purposes and non-intoxicating in fact, and is delivering the same through shipments in interstate commerce to dealers in West Virginia, who hold permits from the Commissioner of Prohibition of said state, authorizing them to handle such products, and during the next succeeding year, said plaintiff will, unless prevented by unforeseen contingencies, ship into the State of West Virginia, approximately the same amount of said products as during the year immediately preceding the bringing of this suit. Said plaintiff manufactures and sells none of said products containing ethyl alcohol except under said permits issued as aforesaid.

Said plaintiff states that all of the manufacturers on whose behalf this suit is brought are also engaged in the business of producing commodities containing ethyl alcohol, under permits heretofore issued by the Commissioner of Internal Revenue of the Bureau of Industrial Alcohol, and, like said plaintiff, are engaged in the business of selling and shipping the same through interstate commerce to dealers in West Virginia, holding permits from the Prohibition Commissioner of said state.

Plaintiff Durham Bros. Co., Inc., is a dealer in groceries and food products selling at wholesale to retail dealers in the State of West Virginia and elsewhere, and said plaintiff desires to sell and ship in interstate commerce in the State of West Virginia, among other commodities, flavoring extracts and other liquids containing ethyl alcohol, all of which are non-intoxicating and unfit for beverage purposes, and

which are manufactured exclusively by persons, firms and corporations holding proper permits therefor issued by said Commissioner of Internal Revenue or the Bureau of Industrial Alcohol. Said Durham Bros. Co., Inc., desires to sell only to those retail dealers in West Virginia who hold permits from the Prohibition Commissioner of said state authorizing them to handle such products.

All other dealers on whose behalf this suit is brought are also engaged in the business of selling at wholesale to retail dealers in the State of West Virginia, and elsewhere, and of [fol. 6] shipping into said state, among other commodities, liquids containing ethyl alcohol, all of which are non-intoxicating and unfit for beverage purposes, and which are manufactured exclusively by persons, firms and corporations holding proper permits issued by said Commissioner of Internal Revenue or the Bureau of Industrial Alcohol. All of said dealers sell only to those retail dealers in the State of West Virginia who hold permits from the Commissioner of Prohibition of the State of West Virginia.

Neither the named plaintiffs nor any parties represented by them herein make any sales of the products herein mentioned in the State of West Virginia, or ship any such products into said state except by means of shipments in interstate commerce.

IV

By amendment to the constitution of the State of West Virginia and by acts of the legisl-ture thereof originally adopted in the year 1913, and by the several amendments to said acts, the manufacture, sale; keeping or storing for sale of intoxicating liquors, except as specifically permitted in said acts, were forever prohibited. By said specific exceptions in said acts, it is provided, among other things, that the sale and keeping for sale of any United States pharmacopœia or national formulary preparation in conformity with the West Virginia pharmacy law, or any preparation which is exempted by the provisions of the national pure food law, may be sold and kept and stored for sale, provided that "no one shall manufacture, sell, keep for sale purchase or transport any liquors, as defined in section one of this act and as herein excepted without first obtaining a permit from the Commissioner of Prohibition so to do". Said acts further provide that manufacturers and wholesale dealers

shall pay a fee of fifty dollars for each permit, and that all purchasers in wholesale quantities of liquors, for sale at retail, except licensed druggists, shall pay a fee of two dollars for each permit.

Defendant W. G. Brown, purporting to act in his capacity as Commissioner of Prohibition, from time to time, since the enactment of said statutes by the legislature of West Virginia has promulgated certain regulations, the latest of [fol. 7] which is designated as Ruling Number Five, effective January 1, 1931, wherein it is provided that many of the products manufactured and/or sold by these plaintiffs and those on whose behalf this suit is brought can be sold in the State of West Virginia or shipped into said state in interstate commerce in the manner hereinafter set out, only under permits obtained from said Commissioner of Prohibition. In addition to said regulations said commissioner has caused to be published a list of those who hold permits from said commissioner for the sale of products containing ethyl alcohol in said state, and has stated that all products purchased from dealers who do not hold such permits are subject to confiscation and seizure by him and that it is his intention to seize, confiscate and destroy all products purchased from dealers who do not hold permits as aforesaid, and that all persons selling such products or keeping or storing the same for sale will be prosecuted under the laws of the State of West Virginia; which threatened action on the part of said commissioner would result in the disorganization and destruction of a large part of plaintiffs' business, the loss of many of their customers, and the depreciation, if not destruction, of their good will and property, all to the irreparable damage of the plaintiffs and their stockholders, and which said injury and damage would be incapable of admeasurement and adjudication in an action at law.

True copies of said list of permittees and said Ruling Number Five marked, respectively, "Plaintiffs' Exhibit B" and "Plaintiffs' Exhibit C", are filed with this bill and plaintiffs ask that the same be read and considered as a part hereof.

V

Plaintiffs say that although they and all those for whose benefit this suit is brought are non-residents of the State of

West Virginia, and although all of the products containing Ethyl Alcohol which they sell and ship or desire to sell and ship, to dealers in said state, are approved and legitimate articles of sale and commerce and proper to be transported into the State of West Virginia solely by means of inter-
[fol. 8] state commerce, they have either procured from the commissioner of prohibition the permits which have been demanded by him, at the cost of $50.00 annually for each permit, or have refused to procure said permits, and refrained from shipping said products into said State. Plaintiffs say, that they are advised and believe that the business in which they are engaged is a lawful business, both under the laws of the United States and of the State of West Virginia, and particularly that the sales of all of said products to dealers in the State of West Virginia, all of whom hold permits from said Commissioner of Prohibition, are lawful transactions, and constitute transactions in interstate commerce, and that the demand of the defendant Brown in his capacity of Commissioner of Prohibition is an unlawful attempt to hinder, obstruct and restrain the interstate commerce and business in which these plaintiffs, and those for whose benefit this suit is brought, are engaged. They charge that said Commissioner of Prohibition is utterly without right or authority to require a permit to be issued to the plaintiffs or either of them, or to any of the parties represented by them, for carrying on said business, or to levy a tax thereon or require the payment of a permit fee therefor; notwithstanding which the said defendant W. G. Brown will require the plaintiffs to procure such permit on or before January 1, 1931, for the calendar year 1931, and require each of them to pay a fee of $50.00 therefor; and the said defendant Howard B. Lee will attempt to prosecute these plaintiffs for any failure on their part to procure such permit and pay said fees, unless restrained by this Court; and that there are no means provided by the laws of said state to recover said fees so illegally required to be paid.

VI

Plaintiffs are without remedy at law in the premises, and only in a suit of this nature and by the injunctive processes of this Court can they be fully protected in the enjoyment of their property and rights as aforesaid; the granting of

the injunctive process as hereinafter prayed will prevent the multiplicity of suits and prosecutions, and the questions herein involved can be adequately determined only in a suit of this nature. In consideration whereof, plaintiffs pray: [fol. 9] That the defendant W. G. Brown, Commissioner of Prohibition, and the defendant Howard B. Lee, Attorney General of the State of West Virginia, and their successors, assistants deputies, and agents, be enjoined and restrained, by the order and injunction of this Court, from requiring or attempting to require, either directly or indirectly, said plaintiffs and those for whom they sue, to procure and hold a permit issued by the defendant W. G. Brown, and from exacting or attempting to exact the payment by the plaintiffs of a fee in any sum or amount, and from bringing or permitting to be brought any proceeding at law or in equity for the purpose of requiring the procurement of said permits, and from causing the plaintiffs, or either of them, or any other person or corporation similarly situated, to be arrested for refusing to procure such permit, and from taking any other action in any manner to prevent or interfere with the business of these plaintiffs, or either of them, or of any person or corporation similarly situated, and that an order issue herein directed to the above named defendants, requiring them to show cause why a preliminary injunction should not issue as prayed for herein, and that a temporary restraining order may issue pending the hearing of said order to show cause.

Philip C. Friese, Rummel, Blagg & Stone, Solicitors for Plaintiff.

December 18, 1930.

Duly sworn to by Willoughby W. McCormick. Jurat omitted in printing.

[fol. 10] PLAINTIFFS' EXHIBIT "A" TO BILL OF COMPLAINT

Form 1405-Revised Apr., 1928. Serial No. Md-H-291

Treasury Department, U. S. Prohibition Service

Permit Issued under the National Prohibition Act as Amended and Supplemented and Regulations Issued Thereunder

Office of Supervisor of Permits, 4th Administrative District

To McCormick and Company, Inc., N. W. corner Light & Barre Streets, Baltimore, Maryland:

Application having been duly presented and approved, you are hereby authorized and permitted, subject to the conditions hereinafter stated and all provisions of the laws relating to intoxicating liquor of any State in which any of the privileges herein conferred are exercised, to use intoxicating liquors for other than beverage purposes, to wit:

In the manufacture of preparations listed on applications Form 1404 Supplementals, marked "Approved" by this office.

In the manufacture of U. S. P. and N. F. preparations fit and unfit for beverage purposes.

For general laboratory purposes, necessary to experiment and research work, in accordance with the provisions of Regulations 2, Section 1131.

This permit is also issued to reclaim alcohol by redistillation from the marc of percolation incident to the manufacture of preparations listed and authorized herein. The [fol. 11] alcohol so recovered to be used in products of the same class in which it originally entered.

The quantity of intoxicating liquor (as defined in Section 1, Title II, of the National Prohibition Act) which may be produced or obtained by the permittee during any calender year (or proportionately for the remainder of the calendar year in which this permit is originally issued), shall be the quantity necessary to meet the legitimate needs of the permittee for all operations under such permit, but not to exceed 29,473.5 wine gallons of alcohol, x wine gallons of whiskey, 52. wine gallons of brandy, and 52. wine

gallons of wine: Provided, however that the permittee shall not possess more than 5 per cent of the maximum annual allowances of Alcohol above stated at any one time, and 100% of brandy and 100% of wine.

The penal sum of the bond required to support this permit shall not be less than $12,000.00.

The following stipulations and conditions shall be faithfully observed and performed, and any act done or omitted to be done contrary to the terms and intent of such stipulations and conditions, or any misrepresentation of any fact, found to have been made in securing this permit, shall be deemed a lack of good faith in conforming to the provisions of the National Prohibition Act, as amended and supplemented, and shall constitute good cause for the issuance of a citation and the revocation of this permit:

1. That the permittee and all persons employed by him in any connection with such permit privileges, and all other persons employed by him while on the permit premises, will in good faith observe and conform to all the terms and conditions of this permit; all laws of the United States relating to the manufacture, taxation and control of, and traffic in, intoxicating liquors; all regulations made pursuant to law which are now, or may hereafter be, in force; and all the liquor laws of the State in which the permittees business is located and of all States in which the permit privileges may be exercised.

2. That the permittee will provide and maintain, on the premises described herein, a safe and secure place of stor- [fol. 12] age for all intoxicating liquors possessed under authority of this permit, same to be of sufficient capacity to hold the maximum quantity of intoxicating liquors which may be so possessed by permittee at any one time, and to be kept under lock and accessible only to the permittee and his responsible agents, and to be subject to inspection and approval of the Administrator; description of said place of storage being as follows: Room 20'x20' having a capacity of 60—52 gallon drums, constructed of concrete and corrugated iron, provided with a wood door and padlock and situated on the 6th floor at Light & Barre Sts., Baltimore, Maryland, and that all intoxicating liquors received and possessed by authority of this permit will be stored and

kept in the above-described place of storage, and in no other place except upon approval by the Administrator.

3. That the permittee will keep the files and records pertaining to the business conducted under this permit on the premises covered by the permit, and will make all reports required of him by law or regulation, and will upon proper request, promptly allow and permit inspection to be made by any official or officer of the Bureau of Prohibition, of such files and records, and of all the premises and property used for or in connection with any operations under this permit, including the stocks of intoxicating liquors on hand, and all vehicles passing into or out of said premises.

4. That the actual management of the business and operations to be carried on under this permit will be under the direct charge and supervision of John Glassford, Chief Chemist, whose business address is % McCormick & Company, Inc., Light & Barre Sts., Baltimore, Md., if a change is made in the management of said business and operations. notice thereof, stating the name and address of the new or additional manager, shall be sent by registered mail to the Administrator of the district in which the permit was issued; if the Administrator, within 15 days after receipt of such notice shall notify the permittee that he disapproves such new or additional manager, such change in [fol. 13] management shall not thereafter be effective as to the permit privileges.

5. That if the permittee is a corporation, in the event of any change in the officers or directors of said corporation it will immediately notify the Administrator of the district in which this permit is issued of such change. If such change in such officers or directors effects a change in the management of its operations under the permit, notice thereof must be given to the Administrator by registered mail, and such change may become ineffective as to the permit privileges by the disapproval of the Administrator as provided in paragraph 4.

6. That the permit privileges herein conferred shall not be transferred, and in case of sale or transfer of the business in connection with which the permit activities are conducted, the permittee will submit to the Administrator a statement, under oath, showing the name and address of the purchaser, and any other person directly or indirectly

interested in the enterprise, the amount paid for the business, the balance due, if any, and how secured. That, if permittee is a corporation, any sale, pledge, or other disposition of its corporate stock which results in transferring the control and management of the business of the corporation shall terminate this permit. That, if permittee is a partnership, the sale of a partnership interest shall be deemed to be a sale or transfer of the business.

The application on which this permit is issued and all data, written statements, affidavits, and other documents submitted in support thereof, shall be deemed to be part of this permit.

This permit is effective from the date hereof, and will remain in force until December 31, 1931, unless revoked, suspended, or renewed as provided by law or regulations. All provisions of law and regulations relating to permits are to be considered part of this permit and to be included in the provisions and conditions of this permit. If this permit requires a supporting bond, the failure to keep such bond in force will ipso facto terminate this permit; and this permit may be revoked, suspended, modified, amended, [fol. 14] supplemented, extended, or renewed in the manner and for the causes set forth in regulations or specifically set forth herein, or agreed to by the permittee, or as otherwise provided by law.

Dated this 8th day of December, 1930.

Thos. E. Suint, Supervisor of Permits.

PLAINTIFFS' EXHIBIT "B" TO BILL OF COMPLAINT

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

In Equity

McCORMICK & Co., INC., a Corporation, and DURHAM BROS. Co., INC., a Corporation, Plaintiffs,

vs.

HOWARD B. LEE, Attorney General of West Virginia, and W. G. BROWN, State Commissioner of Prohibition, Defendants

List of Persons, Firms and Corporations in Whose Behalf This Action is Brought

Abbott Laboratories ..... North Chicago, Illinois

Abner Royce Co., The	Cleveland, Ohio
Allen & Co., Mark W.	Detroit, Michigan
Allied Drug Products Co.	Chattanooga, Tennessee
American Commercial Alcohol Corporation	Philadelphia, Pa.
American Druggists Syndicate	Long Island City, N. Y.
American Products Co., Inc.	Cincinnati, Ohio
American Solvents & Chem. Sales Corporation	New York City, N. Y.

[fol. 15]

American Wholesale Corp.	Baltimore, Maryland
Arden, Elizabeth	New York City, N. Y.
Atlantis Sales Corporation	Rochester, New York
Austin, Nichols & Co., Inc.	Brooklyn, New York
Ayer, Inc., Harriet Hubbard	New York City, N. Y.
Bailey Grocery Co., The C. L.	Marietta, Ohio
Baily & Son, James	Baltimore, Md.
Baltimore Drug Co., The	Baltimore, Md.
Banfi Products Corporation	New York City, N. Y.
Beal & Steele Drug Co., The	Steubenville, Ohio
Bingham Co., The W.	Cleveland, Ohio
Blackstone Manufacturing Co.	Newark, N. J.
Blair Laboratories, Dr.	Lynchburg, Va.
Budeker Drug Co.	Richmond, Virginia
Boncilla Laboratories, Inc.	Indianapolis, Indiana
Bonheiur Co., Inc., The	Syracuse, New York
Bowman Bros. Drug Co., The	Canton, Ohio
Boyer Chemical Laboratory, Inc., The	Chicago, Ill.
Brewer & Co., Inc.	Worcester, Mass.
Brooks Co., Inc., The	Attica, N. Y.
Brown & Bro. Co., Wm. H.	Baltimore, Md.
Burnett Co., Joseph	Boston, Mass.
Button Corp., Geo. W.	New York City, N. Y.
Byrnes & Kiefer Co.	Pittsburgh, Pa.
California Perfume Co.	New York City, N. Y.
Carlova, Inc.	Binghamton, N. Y.
Carr, Owens & Co., Inc.	Baltimore, Md.
Chamberlain Medicine Co.	Des Moines, Iowa
Cheramy, Inc.	New York City, N. Y.
Christy, Inc	Newark, N. J.

Cincinnati Economy Drug Co.	Cincinnati, Ohio
Cincinnati Soap Co., The	Cincinnati, Ohio

[fol. 16]

Clifton Forge Grocery Co., Inc.	Clifton Forge, Va.
Colgate-Palmolive-Peet Co.	Chicago, Ill.
Commercial Laboratories, Inc.	Newark, N. J.
Cooper & Sons, T. J.	Winchester, Va.
Coty, Inc.	New York, N. Y.
Davis Manufacturing Co., Inc.	Knoxville, Tenn.
Dealers Sales Corp.	St. Louis, Mo.
DePree Co., The	Holland, Mich.
DeVore Mfg. Co., The	Columbus, Ohio
Dill Co., Inc., The	Norristown, Pa.
Direct Sales Co., Inc.	Buffalo, N. Y.
D'Orsay Perfumeries Corp.	New York City, N. Y.
Dyke-Keys Co., The	Steubenville, Ohio
Earle, Marie, Inc.	New York City, N. Y.
Elipse Grocery & Milling Co.	Bluefield, Va.
Elk Manufacturing Co.	Jellico, Tenn.
Elmo, Inc.	Philadelphia, Pa.
Esteva, C.	New York City, N. Y.
Fahrney & Sons Co., Dr. Peter	Chicago, Ill.
Federal Products Co., The	Cincinnati, Ohio
Fitch Co., The F. W.	Des Moines, Iowa
Floral Products Co., Inc	New York, N. Y.
Foley & Co.	Chicago, Ill.
Frank Tea & Spice Co., The	Cincinnati, Ohio
Fries & Fries Co., The	Cincinnati, Ohio
Furst & Thomas	Freeport, Ill.
Gandolfi & Co., L.	New York, N. Y.
Gibson, Inc., Guy T.	New York City, N. Y.
Gilbert Bros. & Co., Inc.	Baltimore, Md.
Gilmore Drug Co., W. J.	Pittsburgh, Pa.
Henry B. Gilpin Co.	Baltimore, Md.
Graham & Co., Wm.	Baltimore, Md.
Guerlain Perfumery Corp.	New York City, N. Y.
Hale, Justis Drug Co., The	Cincinnati, Ohio
Hampton Grocery Co.	Catlettsburg, Ky.

[fol. 17]

Harley Co., E. C.	Dayton, Ohio
Heberling Co., G. C.	Bloomington, Ill.

Herb Medicine Co., The	Springfield, Ohio
Herpicide Co., Inc., The	Detroit, Mich.
Hirsh & Son, Leon	New York City, N. Y.
Hite Co., Inc., S. P.	Roanoke, Va.
Hollander Bros. Drug Co.	Rankin, Pa.
Hollingshead Co., R. M.	Camden, N. J.
Hopper, Inc., Edna Wallace	Chicago, Ill.
Houbigant, Inc.	New York, N. Y.
House of Tre-Jur, Inc.	New York City, N. Y.
Howard Drug & Medicine Co., The	Baltimore, Md.
Hoyt & Co., E. W.	Lowell, Mass.
Hudnut, Richard	New York City, N. Y.
Jergens Co., The Andrew	Cincinnati, Ohio
Joncaire, Inc., A.	Boston, Mass.
Kauffman-Lattimer Co., The	Columbus, Ohio
Kelly Co., Geo. A.	Pittsburgh, Pa.
Kentucky Alcohol Corporation	New York, N. Y.
Kitchen, Whitt & Co.	Ashland, Ky.
Koch Vegetable Tea Co., Dr.	Winona, Minn.
Frank Manufacturing Co., A. J.	St. Paul, Minn.
Lady Grey Co.	Chicago, Ill.
Lange Co., The	DePere, Wis.
Lazelle, Perfumer	Newburgh, New York
Lee Mfg. Co.	Chicago, Ill.
Leggett & Co., Francis H.	New York City, N. Y.
Lehn & Fink, Inc.	Bloomfield, N. J.
Lewis Bros., Inc.	New York City, N. Y.
Liebenthal Bros. Co., The	Cleveland, Ohio
Lilly & Co., Eli	Indianapolis, Indiana
Loewy Drug Co., Inc.	Baltimore, Md.
Loveland Co., Wm. H.	Binghamton, N. Y.
Lucky Tiger Remedy Co.	Kansas City, Mo.
Luxor, Ltd.	Chicago, Ill.
Maltbie Chemical Co., The	Newark, N. J.
Marinello Co., Inc.	New York, N. Y.
McBrady & Co., J. E.	Chicago, Ill.

[fol. 18]

McConon & Co.	Winona, Minn.
McCormick & Co.	Baltimore, Md.
McKesson & Robbins	Bridgeport, Conn.

Merrell Co., The Wm. S.	Cincinnati, Ohio
Merrill Drug Co., E. J.	Ironton, Ohio
Miller Co., Frank	Camden, New Jersey
Milson Co., The	Cincinnati, Ohio
Mulford Co., H. K.	Philadelphia, Pa.
Mulhens & Kropff, Inc.	New York City, N. Y.
Muth Bros. & Co.	Baltimore, Md.
Myers & Co., Inc., J. W.	Hagerstown, Md.
National Drug Co., The	Philadelphia, Pa.
Nelson, Baker & Co., The	Detroit, Mich.
Newton Products Co., The	Cincinnati, Ohio
Normany Products Co.	Los Angeles, Calif.
Norwich Pharmacal Co., The	Norwich, N. Y.
Nowland Co., Geo. H.	Cincinnati, Ohio
Oglivie Sisters	New York, N. Y.
Orr, Brown & Price Co., The	Columbus, Ohio
Ossola Bros., Inc.	Pittsburgh, Pa.
Owl Drug Co., The	San Francisco, Calif.
Palmer, Solon	New York City, N. Y.
Park & Sons Co., Ltd., John D.	Cincinnati, Ohio
Parke Co., L. R.	Philadelphia, Pa.
Parke, Davis & Co.	Detroit, Mich.
Parry Vegetable Compound Co.	Mansfield, Ohio
Peasles-Gaulbert Co.	Louisville, Ky.
Pa. Mfgrs. & Extract Co.	S. S. Pittsburgh, Pa.
Personeni, Inc., Joseph	New York City, N. Y.
Pinaud, Inc.	New York City, N. Y.
Pitman-Moore Co.	Indianapolis, Indiana
Pittsburgh Auto Equipment Co.	Pittsburgh, Pa.
Piver, Inc., L. T.	New York City, N. Y.
Plough Chemical Co., Inc., The	Memphis, Tenn.
Powers-Taylor Drug Co.	Richmond, Va.
Publicker Commercial Alcohol Co. of Delaware	Philadelphia, Pa.
Puritan Drug Mfg. Co.	Columbus, Ohio

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Raleigh Co., The W. T.	Freeport, Ill.
Rice, Lewis A.	Frederick, Md.
Roanoke Drug Co., Inc.	Roanoke, Va.
Roosa & Ratliff	Cincinnati, Ohio
Rorer, Inc., Wm. H.	Philadelphia, Pa.

Ross Independent Oil Co.	Washington, Pa.
Rossville Co., The	Lawrenceburg, Indiana
Royal Mfg. Co., of Duquesne, Inc.	Duquesne, Pa.
Sauer Co., C. F.	Richmond, Va.
Sayman Products Co., T. M.	St. Louis, Mo.
Schieffelin & Co.	New York City, N. Y.
Seeman Bros., Inc.	New York City, N. Y.
Severa Co., W. F.	Cedar Rapids, Iowa
Sharp & Dohme	Baltimore, Md.
Shipley-Massingham Co.	Pittsburgh, Pa.
Southern Chemical Co.	Petersburg, Va.
South Penn Oil Co.	Pittsburgh, Pa.
Spencer Perfume Co., Inc.	South Bend, Indiana
Sprague, Warner & Co.	Chicago, Ill.
Squibb & Sons, E. R.	New York City, N. Y.
Standard Pharmaceutical Corp.	Baltimore, Md.
Stansbury Drug Co., The	Middleport, Ohio
Stearns & Co., Frederick	Detroit, Mich.
Stewart Co., Jesse C.	Pittsburgh, Pa.
Stewart & Ward, Inc.	Bellaire, Ohio
Stras, Harman & Co., Inc.	North Tazewell, Va.
Strother Drug Co.	Lynchburg, Va.
Stuart & Co., C. H.	Newark, N. Y.
Stryon-Beggs Co., The	Newark, Ohio
Sweet Mfg. Co., Inc., The	Pittsburgh, Pa.
Thayer Pharmacal Co.	Chicago, Ill.
Thompson's Specialties, Inc., The	Springfield, Mass.
Thomson & Taylor Co.	Chicago, Ill.
Tornello & Co., C.	Youngstown, Ohio
Triner Co., Joseph	Chicago, Ill.
Tri-State Drug Co.	Uniontown, Pa.
United Drug Co.	Boston, Mass.
Upjohn Co., The	Kalamazoo, Mich.
Vadsco Sales Corp.	New York City, N. Y.
Vail Bros., Inc.	Philadelphia, Pa.
Vantine & Co., Inc., A. A.	New York City, N. Y.

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Virginia Dare Extract Co.	Brooklyn, New York
Vogler Drug Co., The Alfred	Cincinnati, Ohio
Wabash Baking Powder Co.	Wabash, Indiana

Warner & Co., Inc., Wm. R.	New York City, N. Y.
Watkins Co., The J. R.	Winona, Minn.
Westphal, Paul	New York City, N. Y.
Weyer, Geo. H.	Kansas City, Mo.
Whitmer Co., The H. C.	Columbus, Indiana
Wildroot Co., Inc., The	Buffalo, New York
Williams Co., The J. B.	Glastonbury, Conn.
Winarick, Ar.	New York City, N. Y.
Woodworth, Inc.	Rochester, New York
Wyeth & Bros., Inc., John	Philadelphia, Pa.
Yardley & Co., Inc.	New York, N. Y.
Yates Drug & Chemical Co.	New York, N. Y.
The Baltzly Company	Canton, Ohio
The Eugene Berninhaus Co.	Cincinnati, Ohio
Brown Barber Supply Co.	Steubenville, Ohio
Buckholz & Maus	Pittsburgh, Pa.
Cambridge Barber Supply	Cambridge, Ohio
Edlis Barbers Supply Co.	Pittsburgh, Pa.
P. W. Jackson Chemical Co.	Indianapolis, Indiana
J. Lang & Co.	Baltimore, Md.
Chas. J. Lynch	Portsmouth, Ohio
Mabsco Barbers Supply Co.	Pittsburgh, Pa.
Andrew Makrauer & Son, Inc.	Pittsburgh, Pa.
Mercer Barber Supply Co.	Sharon, Pa.
Nashville Barber Supply Co.	Nashville, Tenn.
Old Reliable Hannan Supply Corp.	Cincinnati, Ohio
Pabst & Kohler	Columbus, Ohio
Pennsylvania Perfumery & Barber Supplies	Pittsburgh, Pa.

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H. L. Purnell Co.	Salisbury, Md.
A. Reeves Barber Supply Co.	Richmond, Virginia
Semones-Hunt Co.	Knoxville, Tenn.
Southern Barber Supply Co.	Roanoke, Virginia
Dorn, John G.	Sandusky, Ohio
Engels & Krudwig Co., The	Sandusky, Ohio
Hammer Co., The A. J., Agent for Beaulieu Vineyards Co.	Cleveland, Ohio
Stetter, Fred. M., Agent for Beaulieu Vineyard, Inc.	Cincinnati, Ohio

American Oil Co., The	Baltimore, Md.
Begg, Sons & Co., C. W.	Chicago, Ill.
Bourjois, Inc.	New York, N. Y.
Calvert Drug Co., The	Baltimore, Md.
Cole Chemical Co.	St. Louis, Mo.
Kalerd Laboratories, Inc.	Pittsburgh, Pa.
Knapp Extract Co.	Cleveland, Ohio
Lamont, Corliss & Co.	New York City, N. Y.
Mutual Drug Co., The	Pittsburgh, Pa.
Quaker Maid, Inc., The	New York, N. Y.
Pitkin & Co., J. M.	Newark, N. J.
Reid, Murdoch & Co.	Chicago, Ill.
Richter & Co., Inc., F. Ad.	Brooklyn, N. Y.
Sausage Mfg. Co.	Pittsburgh, Pa.
Schindel, Rohrer & Co., Inc.	Hagerstown, Md.
Sea Breeze Laboratories, Inc.	Pittsburgh, Pa.
Smith-Higgins Co., Inc.	Johnson City, Tenn.
Southern Grocery Co., Inc.	Roanoke, Virginia
Southern Sales Co.	Bristol, Tenn.
Stellar Drug Co., Inc.	New York, N. Y.
Tru-Lax Products Co.	Newark, N. J.
Walsh & Co., J. A.	Pittsburgh, Pa.
Wuppermann Angostura Bitters Agency, Inc., J. W.	New York, N. Y.
Canton-Akron Barber Supply Co.	Canton, Ohio

[fol. 22] PLAINTIFFS' EXHIBIT "C" TO BILL OF COMPLAINT

S. P. C. No. 1-A

STATE OF WEST VIRGINIA:

Prohibition Department

Ruling Number Five

Effective January 1, 1931

Class "A": Alcoholic Preparations Listed As "Liquors", The Sale of Which is Prohibited in This State.

The following, on account of the general abuse of the preparations or liability to abuse, are classed as beverages, and their sale forbidden.

Jamaica Ginger or Tincture of Ginger in whatever form; Tinctures of Orange Peel and Lemon Peel; Extracts of Sweet Anise and Juniper, Elixir Grippo, Lyko, "Old Monticello Tonic", Veenotonic, Unapproved Bitter Wines, Bateman's Drops, Godfrey's Cordial, Blackberry Cordial, all Rubbing Alcohols not specifically approved, Malt Extracts and all similar preparations for making malt beverages. Imitation Extracts of Blackberry, Pear, Apple, Grape, Rum, Brandy, etc. Abbott's Bitters, Egon Braun Amargo Bitters, Litthauer Bitters, Todds Tonic, Resault Wine Tonic, Chateau Vinay Wine Tonic, Ner-Bo-Ton, Malt Tonics and Cider containing more than ½ of 1 per cent of alcohol by volume, and all like preparations used as intoxicating beverages. The two following classes comprise articles having a recognized legitimate use, and are authorized by permit to be sold for such use:

Class "B": Sold By The Drug Trade Only Under Permit. (Samples Must Have Been Submitted For Approval Before Distributors Shall Offer For Sale.)

[fol. 23] Pure Grain Alcohol, Alcohol medicated according to Federal Formulae, Approved Rubbing Alcohols, which are sold under certificate by Registered Pharmacist or under his supervision and signed by him and the customer. Wine for sacramental purposes, lightning Hot Drops, Paregoric, Tincture Virburnum, Wheatamin, Whitlock's Kidney Medicine, Sweet Spirits of Nitre and Aromatic Spirits of Ammonia in bulk, approved Canned Heat (so-called), Holko Tonic, Angostura Bitters, Cintora, Peptone, Tonk-a-Vin, all metallic and organic derivatives of Barbaturic Acid physiologically classed as hypnotics, approved Beef Tonics containing 30 per cent solid matter in solution, Bay Rum and Bay Rum Compounds, Hair Tonics and Lotions containing 15 per cent of alcohol by volume, and all tonics, Cordials and Elixirs having 15 per cent or over by volume.

All Bay Rum and Bay Rum Compounds must contain as a denaturant one-fourth grain of Potassium Antimony Tartrate (Tartar Emetic) and must be sold to the ultimate consumer in quantities not exceeding eight fluid ounces.

Class "C": May Be Sold By All Dealers Under Permit. (Samples Must Have Been Submitted For Approval Before Distributors Shall Offer For Sale.)

1. Patent And Proprietary Medicines of recognized merit but liable to misuse as intoxicants by addicts; all brands of approved Italian Fernets, Sweet Spirits of Nitre and Aromatic Spirits of Ammonia each in not to exceed 1 ounce bottles to ultimate consumer.

2. Tonics And Cordials: All Tonics and Cordials less than 15 per cent of alcohol by volume.

3. Toilet Waters and Perfumes: All Toilet Waters and Perfumes approved by the Commissioner as sufficiently denatured or medicated to prevent use as intoxicants.

4. Hair Tonics and Lotions: All Hair Tonics and Lotions containing less than 15 per cent of alcohol by volume which have been approved by the Commissioner.

[fol. 24] 5. Extracts and Flavors: Pure Orange, Lemon and Vanilla containing 40 per cent and over of alcohol by volume, Imitation Extracts and Flavors containing 15 per cent or over of alcohol by volume. All extracts, required to be sold under permit, to be sold in not to exceed two-ounce bottles, to ultimate consumers.

6. Denatured Alcohol, Also All Anti-Freeze Compounds Containing 10 Per Cent Or Over Of Alcohol By Volume: Used for scientific and mechanical purposes, except the rubbing or bathing alcohols and medications under Federal Formulae sold only by druggists.

Class "D": May Be Sold By All Dealers Without Permit. (Samples Must Have Been Submitted For Approval Before Distributors Shall Offer For Sale.)

Drugs and medicines with alcoholic content, but so fully medicated that they cannot be used as intoxicants. Illustrating this class are such articles as Spirits of Camphor, Tincture of Iron, Tincture of Iodine, Castoria, Shoe Polishes, Insecticides, etc. Long used patent and proprietary medicines, free from objections as being employed as intoxicants by addicts, fall in this class.

Important—Read Carefully

1. The foregoing classification is not a complete or final one, but fairly illustrates the four groups or classes into which the various alcoholic preparations defined as

"liquors" by Section 1, Article 1, of the Prohibition Law are placed.

2. Bay Rum, Hair Tonics and Toilet Waters are often used as intoxicants by addicts. Permits do not protect sales for illegal use and such sales are made at the peril of the dealer. In such cases permits will be revoked and prosecutions entered under Section 4, Article 1, of the Prohibition Law.

[fol. 25] 3. Alcoholic preparations barred from sale in this State on account of their use as intoxicants, may, when formula can be modified so as to remove this objection, be admitted to sale under permit.

4. New alcoholic preparations should be submitted to the Department for analysis and classification before being offered for sale by distributors.

5. In passing upon and classifying these alcoholic mixtures and preparations the Commissioner gives full hearings to all parties interested, analysis is made by a competent chemist, and the advice and assistance of the Health Department and the Board of Pharmacy is given in many instances.

6. Barbers may purchase from retail and wholesale dealers holding permits Hair Tonics and Toilet Waters, for use in chair only, and are not required to take out permits. No retail dealer's permit will be issued to barbers.

7. "Class A" comprehends "liquors" in the same legal sense as whiskey, wine or beer, and comes within the inhibition of Sections 4 and 9, Article 1, of the Prohibition Law.

8. "Class B" and "Class C" include preparations sold only under permit as specified above.

9. "Class D" illustrates preparations that require no permit for their sale.

10. This ruling is subject to revision from time to time, as made necessary by actual test and experience.

W. G. Brown, State Commissioner of Prohibition.

Charleston, W. Va., September 30, 1930.

[fol. 26] IN UNITED STATES DISTRICT COURT

JOINT ANSWER OF W. G. BROWN, STATE COMMISSIONER OF PROHIBITION OF THE STATE OF WEST VIRGINIA, AND HOWARD B. LEE, ATTORNEY GENERAL OF THE STATE OF WEST VIRGINIA, DEFENDANTS, TO THE BILL OF COMPLAINT HEREIN—Filed January 12, 1931

For answer to the bill of complaint in the above entitled cause defendants above named say:

I

Answering the first paragraph of the bill defendants admit that plaintiffs are wholesale dealers in commercial products containing as a necessary solvent or preservative ethyl alcohol, and that said products are manufactured and sold under permits issued by the United States Bureau of Industrial Alcohol and approved by the United States Bureau of Prohibition; that defendant W. G. Brown is State Commissioner of Prohibition of the State of West Virginia, and defendant Howard B. Lee is Attorney General of said State as alleged in plaintiff's bill; and that the said defendants are residents of the Southern District of West Virginia. But defendants deny the allegation in said paragraph that said products "are used and usable exclusively for medicinal, mechanical, toilet and culinary purposes" and deny the allegation that "none of which products are intoxicating liquors".

II

Answering the second paragraph of said bill defendants admit the allegation in sub-paragraph "(1)", but specifically deny the allegations in sub-paragraphs "(2)" and "(3)" of said second paragraph.

III

Answering the third paragraph of the bill defendants say they have no knowledge of the time plaintiff McCor-[fol. 27] mick & Co., Inc., has operated its plant, nor of the place of its operations, nor of the extent and scope of its activities, the per cent of its alcoholic products sold and the volume of its business in the State of West Virginia.

Defendants admit that under the provisions of the National Prohibition Act said plaintiff, McCormick & Co., Inc., in order to manufacture, transport and sell said products containing ethyl alcohol, is required to have issued to it a permit authorizing it to manufacture, transport and sell such products for use for medicinal, mechanical, toilet and culinary purposes; and defendants also admit that this plaintiff and all manufacturers likewise engaged in the production of such commodities containing ethyl alcohol, on whose behalf this suit is brought, are holders of permits under the National Prohibition Act; but defendants deny that such Federal permits give to said plaintiffs the right to transport and sell said products classified as "liquors" under Section 1, Article 1 of Chapter 60 of the Official Code of West Virginia into said state through interstate commerce; and deny that such Federal permits authorize or give the right to the said plaintiffs to engage in the business of selling and shipping same through interstate commerce to dealers in West Virginia who hold permits from the State Commissioner of Prohibition; but defendants deny the allegation in said paragraph that the alcoholic products offered for sale in the State of West Virginia by plaintiffs and all others on whose behalf their suit is brought, and for which the said State requires a permit under its laws, are "non-intoxicating in fact".

IV

Answering the fourth paragraph of the bill defendants admit that the first three sentences of said paragraph correctly state the laws, in so far as set out, in respect to the manufacture, sale, keeping or storing for sale, purchase and transportation of liquors in this state; but deny that Defendant W. G. Brown, "purporting to act as Commissioner of Prohibition" has promulgated certain regulations as in said bill alleged; that said Commissioner has published a list of permit holders as therein stated and has stated that it is his intention to confiscate and destroy [fol. 28] "all products purchased from dealers who do not hold permits as aforesaid, and that all persons selling such products or keeping or storing the same for sale will be prosecuted under the laws of the State of West Virginia; which threatened action on the part of said Com-

missioner would result in the disorganization and destruction of a large part of plaintiffs' business, the loss of many of their customers and the depreciation, if not destruction, of their good will and property, all to the irreparable damage of the plaintiffs and their stockholders". On the contrary defendants say that the said defendant, Brown, pursuant to the laws of the State of West Virginia, and more especially under and by virtue of Section 3, Article 2 of Chapter 60 of the Official Code of West Virginia, which provides that, "The manufacture of alcohol, wine and other liquors, and the sale of the same by the manufacturer, by wholesale druggist and other dealers shall be under the supervision of the Commissioner and under such rules and regulations as he may from time to time prescribe", and the further provisions of Sections 1, 4, 5, 9, 11, and 13 of Article 1 of said Chapter 60, has, in good faith, in conformity with the laws of West Virginia and of the laws of the United States, promulgated certain rules and regulations for the sale of liquors in this state. A true copy of said Rules and Regulations is here filed, as part hereof, marked "Defendants' Exhibit No. 1".

And defendants deny that said rules and regulations are unlawful, and deny that these regulations have deprived or will deprive plaintiffs of any rights, privileges and immunities secured to them by the constitution of the United States, to-wit, the right to ship and transport their said products in interstate commerce.

And defendants deny the charge that the action of the said defendant, Brown, in promulgating the said rules and regulations would result in the disorganization and destruction of any lawful business, or the loss of any lawful customers, or the depreciation and destruction of their good will and property employed in lawful business, and of irreparable damage of the plaintiffs and their stockholders engaged and employed in accordance with the laws of this state and of the United States.

[fol. 29]

V

Answering the fifth paragraph of the bill, defendants deny that the products containing ethyl alcohol which plaintiffs desire to sell are approved and legitimate articles of sale and commerce and proper to be transported into the

State of West Virginia solely by interstate commerce, but aver that many of the said products are "liquors" as defined by the laws of the State of West Virginia, and can only be sold and transported into said State in accordance with its laws, and by permit issued from the State Commissioner of Prohibition under the rules and regulations prescribed by him pursuant to said laws. Defendants further deny the allegation of plaintiffs that they are engaged in a lawful business under the laws of the United States and the State of West Virginia, and that the sales of all of said products as desired by them, without first obtaining permits for such sales, as required by the laws of the said state and the rules and regulations prescribed thereunder by the said Commissioner "are lawful transactions and constitute transactions in interstate commerce"; and deny that the demand of the Defendant Brown, in his capacity of Commissioner of Prohibition, is an unlawful attempt to hinder, obstruct and restrain the interstate commerce and business in which these plaintiffs, and those for whose benefit this suit is brought, are engaged. Defendants deny the charge that said Commissioner of Prohibition is utterly without right or authority to require a permit to be issued to the plaintiffs, or to any of the parties represented by them, for carrying on said business, and to require the payment of a permit fee therefor.

Defendants aver that it is the duty of said plaintiffs in compliance with the laws of the State of West Virginia to first secure the permits required thereunder before attempting to transport and sell said products in said State through interstate commerce; that — is the duty of said W. G. Brown, as such Commissioner, to require plaintiffs to so procure such permits; and that it is — duty of the sa-d Howard B. Lee, as such Attorney General, to prosecute plaintiffs for failure and refusal on their part to procure [fol. 30] such permits and pay such fees as are required by the laws of said State.

And defendants deny each and every allegation in the said bill, not herein admitted, controverted or specifically denied.

Wherefore defendants deny that the said plaintiffs are entitled to the relief, or any part thereof, in the said bill of complaint demanded, or any relief whatever, and pray

to be hence dismissed with their reasonable charges in this behalf wrongfully sustained.

Dated January —, 1931.

H. B. Lee, Attorney General; R. Dennis Steed, Assistant Attorney General; W. G. Brown, Solicitors for Defendants.

Duly sworn to by W. G. Brown. Jurat omitted in printing.

[fol. 31] DEFENDANTS' EXHIBIT NO. 1 TO ANSWER

WEST VIRGINIA:

Rules and Regulations prescribed by the State Commissioner of Prohibition for the sale of ethyl alcohol, wine and alcoholic preparations, defined as liquors in Section 1, as provided by Sections 4 and 24 of Chapter 32-A of the Code of West Virginia, as amended by the acts of one thousand nine hundred and twenty-three.

January 1, 1927

First—Manufacturers

(1) A manufacturer of liquors within the meaning of these rules and regulations is a person, company or corporation, a resident of West Virginia, engaged in the business of distillation, denaturation or medication of ethyl alcohol, or the making of wines as permitted and supervised by the Federal Government; or the compounding and manufacturing of medicinal preparations, patent medicines, toilet and antiseptic mixtures, flavoring extracts, pharmaceuticals, etc., in which alcohol, wine or other alcoholic solution is an essential ingredient, and which said preparations, mixtures, and compounds are intoxicating and susceptible of use as beverages; (2) and which said person, company or corporation, in good faith, engages in such business and not for the purpose of evading the prohibition laws of the State, or aiding or abetting others in violating the same by any scheme or device whatsoever. (3) Non-resident manufacturers doing business in this State are classed and treated as wholesale dealers under these rules and regula-

tions. (4) Any resident manufacturer who has made application in writing on the proper form to the State Commissioner of Prohibition, and has paid the fee required by law, and received from said Commissioner a written permit so to do, may manufacture such liquors as above defined and set out, and may sell the same at wholesale for pharmaceutical, medicinal, scientific and mechanical purposes only, to those having the right under the law to purchase and [fol. 32] who hold permits to purchase same duly issued by the State Commissioner of Prohibition.

Second—Wholesale Druggist

(1) A wholesale druggist within the meaning of these rules and regulations is one whose business is that of generally selling drugs, pharmaceuticals, ethyl alcohol, wine and all alcoholic preparations defined as liquors in Section 1, at wholesale to retail druggists, manufacturers of medicines and pharmaceuticals, physicians, dentists and veterinarians, etc.; (2) same as manufacturer. (3) Any such wholesale druggists, after obtaining a permit from the State Commissioner as in (4) under Manufacturer, may sell to retail druggists, pure grain alcohol for medicinal, pharmaceutical, mechanical or scientific purposes; and such alcohol to physicians, dentists and veterinarians for use in the practice of their professions only and not for re-sale, and who shall have been granted permits by the State Commissioner of Prohibition to purchase the same; and may also sell wine for sacramental purposes by religious bodies, as well as such other alcoholic mixtures and preparations as the law and the latest Prohibition Department Ruling permits, by complying with the rules and regulations prescribed by the State Commissioner of Prohibition. (4) Any such wholesale druggist residing in this State may purchase and use in the manufacture of medicinal preparations and compounds, sherry wine in quantities not exceeding twenty-five wine gallons during any period of ninety days, by complying with the rules and regulations of said Commissioner after having been duly issued a permit in writing authorizing such purchase and use.

Third—Wholesale Dealer

(1) A wholesale dealer within the meaning of these rules and regulations is a person, company, or corporation whose

business is that of selling at wholesale ethyl alcohol in any form, whether pure, medicated or denatured, and wine as permitted and supervised by the Federal Government; or selling as aforesaid any liquid, mixture, or preparation, whether patented or not which will produce intoxication, or coming within the definition of "liquors" in Section 1; (2) [fol. 33] same as manufacturer. (3) Any such wholesale dealer, after obtaining a written permit from the State Commissioner of Prohibition as in (4) under Manufacturer, may sell such liquors as above defined and set out, at wholesale, for medicinal, pharmaceutical, scientific and mechanical purposes to any person, company or corporation who holds a permit from said commissioner to purchase the same.

Fourth—Retail Druggist

(1) A retail druggist within the meaning of these rules and regulations is a person, firm or corporation who generally sells drugs and pharmaceuticals at retail, and who is registered as a pharmacist, or who employs a registered pharmacist, and who has received from the proper authorities of his County permission and license as required by law to carry on the business of retail druggist; and (2) who conducts such business in good faith and according to law and not for the purpose of selling intoxicating liquors of any kind in violation of law.

Fifth—Retail Dealer

(1) A retail dealer within the meaning of these rules and regulations is a person, firm or corporation whose business is that in which the sale of alcoholic preparations coming under the definition of "liquors" in Section 1 is incidental an- auxiliary to the line of business carried on by said dealer; (2) same as (2) under Retail Druggist. (3) Examples of retail dealers are general merchandise stores, grocers, garages, automobile service stations, confectionery stores, traveling or itinerant salesmen, barbers, etc. (4) Same as (2) under Manufacturer. (5) All retail dealers desiring to purchase at wholesale and sell at retail alcoholic preparations having made application in writing on the proper form and paid the fee as required by law and obtained a permit from the Commissioner so to do may sell at retail to consumers preparations coming under class "C" of Prohibition Department Ruling.

[fol. 34] Sixth—Retail Barber Supply Dealers

(1) A retail barber supply dealer within the meaning of these rules and regulations is a person, company or corporation whose business is that of generally selling alcoholic preparations, which are generally used by barbers in the practice of their profession, to barbers and barber shops, and who operate in conformity to the following conditions: (a) Shipments of any particular toilet or antiseptic preparation containing alcohol must not exceed five gallons to any customer in any month, except that Shampoos containing alcohol and Witch Hazel low in alcoholic content are not included in this regulation, and Supply Dealers must report immediately all sales to the amount of three gallons or over of Bay Rum, Quinine Hair Tonic or Lilacs. (b) Sales must be made only to permit holders in this State and no barber is permitted to rebottle and sell any alcoholic preparation, but sales to his customers shall be in the original package. Supply dealers are required to observe this regulation, and make confidential reports of same to the Department. (c) All Supply dealers selling in excess of the quantity fixed in paragraph (a) and not in accordance with this regulation, will be classed as Wholesale Dealers and required to pay a fee of $50.00 for permit; and all Supply Dealers complying with this regulation will be classed as Retail Dealers and required to pay a fee of $2.00 for permit. (d) Barbers buying at retail for use in their chairs only and not for resale are not required to take out permits. (e) Retail Barber Supply Dealers residing in this State are authorized to purchase alcoholic preparations from Manufacturers and Wholesale Dealers holding a West Virginia State permit. (f) No resident retail barber supply dealer is permitted to rebottle and sell any alcoholic preparation, but sales to his customers shall be in the original package. (g) A Retail Barber Supply Dealer desiring to rebottle and sell alcoholic preparations shall be classed as a Manufacturer and required to obtain a Manufacturer's or Wholesale Dealer's permit in writing from the Commissioner so to do. (h) It is stipulated by the applicant that in consideration of the receipt of a Retail Dealer's permit for the sale of alcoholic preparations to the Barber trade of West Virginia strict compliance with said regulations is the con-

[fol. 35] dition on which said permit is issued, and a failure

to comply therewith shall be considered sufficient cause for the withdrawal of said permit.

Seventh—Reports by Manufacturers, Wholesale Druggists, and Wholesale Dealers

(1) When such information becomes necessary in connection with the enforcement of the prohibition law, the right is reserved by the Commissioner of Prohibition to require such manufacturer, wholesale dealer, or wholesale druggist who has received such permit as aforesaid to furnish him with a complete report of sales, of any or all alcoholic preparations, made, which report shall be made in conformity to the same form of report (S. P. C. No. 9) as furnished by the Commissioner; and such report shall be sworn to by the owner, manager or party actually in charge. As to reports each manufacturer, wholesale dealer, or wholesale druggist is handled separately and not as a group by the Commissioner. (2) However, all manufacturers, wholesale druggists, and wholesale dealers shall make a complete report, until further notice, upon all sales in West Virginia of the following preparations: (a) ethyl alcohol, whether pure grain, medicated or denatured; (b) all rubbing alcohols; (c) Sweet Spirits of Nitre, in bulk, that is in exceeding one-ounce containers; (d) extracts to restaurants, hotels, boarding houses, candy makers, ice cream manufacturers, etc., in bulk, that is in exceeding two-ounce containers; (e) and Sterno Canned Heat. (3) All manufacturers, wholesale dealers or wholesale druggists, not making a complete monthly report to the Commissioner of Prohibition, must keep their records so that the Commissioner may obtain the quantity of any or all alcoholic preparations sold to any dealer during any given period of time. Such records should in all cases contain the West Virginia State Permit number of the dealer to whom such sales were made. (4) All Manufacturers, wholesale druggists and wholesale dealers shall make such special reports to the Commissioner of Prohibition when requested by him. (5) Reports as required by the Commissioner should be made not later than the tenth day of each month for the month preceding.

[fol. 36]

Eighth

The Commissioner of Prohibition hereby reserves the right to notify such wholesale druggist, dealer, or manu-

facturer not to sell alcohol, wine or other liquors to any retail druggist, manufacturer of medicines and pharmaceuticals, physicians, dentist or veterinarian, etc., who he has reason to believe is violating the law; or to give such notice, for any other reasons to the Commissioner of Prohibition deemed proper; and upon notice as aforesaid to such wholesale druggist, dealer or manufacturer, in writing he shall at once discontinue selling to such retail druggist, or other purchaser and a sale made to such retail druggist, or other purchaser after such notice is given, shall be deemed a sale made contrary to law.

Ninth

The Commissioner of Prohibition reserves the right to revoke or suspend any permit granted to any dealer or druggist whom he has reason to believe is selling contrary to the rules herein named, or in violation of the law regulating the sale of intoxicating liquors; and a sale of alcohol or any alcoholic preparations coming within the purview of liquors as defined in Section 1, made by such dealer or druggist after such permit is revoked shall be deemed a sale made contrary to law.

Tenth

Alcoholic preparations offered for sale in this State for external use must be so denatured as to render them unfit for beverage purposes and non-potable. All liquids, mixtures and preparations containing so much as one-half of one per cent of alcohol and not specifically excepted under Section 4 will be treated as "liquors" within the definition of Section 1, until they are shown to be sufficiently denatured or medicated as to be non-potable. When this is shown to the satisfaction of the Commissioner any such preparation for external use only may be sold by manufacturers or through wholesale druggists holding permits in this State provided always that the sale is made to druggists and that [fol. 37] all druggists making sale to the consumer stamp each bottle or package sold with the West Virginia Prohibition Department label.

Eleventh

With the advice and approval of a committee of the West Virginia Pharmaceutical Association, a label has been de-

vised of the usual form and size, with the following words in red ink printed on white paper, followed by the name and address of the druggist.

West Virginia

Prohibition Department

Label

Caution

For External Use Only

This preparation is so denatured as to render it especially adapted for bathing and massage. Absolutely unfit for internal use. Serious conditions will result from its infernal administration.

(Name and Address of Druggist)

To be placed on all alcoholic liquids and preparations excepted from the provisions of section 1 of Chapter 32A and section 4 of said chapter and passed by the Commissioner as non-beverage preparations. This label which is furnished by the druggist, must be affixed to each bottle or package sold by the retail druggist to the consumer, and a copy of the label filed with the Commissioner.

Twelfth

Applications for permits to manufacture, sell or purchase alcohol, wine, and alcoholic preparations defined as [fol. 38] "liquors" in Section 1, must be made upon forms furnished by the Commissioner, and in filling out such applications no alterations or erasures of the printed form should be made. The affidavit must be subscribed by the applicant in person, or in case of a corporation, by a duly authorized official, and if fee is required, same must accompany the application. All applications for permit should be sworn to before a Notary Public or other person having authority under the law of administering oaths.

Thirteenth—Fees Collected

Fees are collected in full for the calendar year (the law makes no provision for collecting of fractional fees) as fol-

lows for West Virginia State permits for the manufacture, purchase, sale and use of "liquors", and use of Still:

Manufacturers, wholesale dealers and wholesale druggists	$50.00
Users of alcohol or alcoholic preparations in wholesale quantities	10.00
Registration of Stills (druggists excepted from paying fee)	5.00
Retail Dealers	2.00

Fourteenth

The latest Prohibition Department Ruling, which is published separate from these rules and regulations, is made a part of these rules and regulations, and should be carefully studied and followed.

Fifteenth—Physicians

(1) Regular practicing physicians duly licensed to practice medicine in this State and desiring to obtain alcohol or alcoholic preparations for use in the practice of their profession, and not for re-sale, may obtain a permit without fee from the Commissioner so to do. (2) Physicians using in excess of five gallons of alcohol during the calendar year [fol. 39] must take out User's Permit and pay the fee of $10.00 as required by law.

Sixteenth—Dentists and Veterinarians

Regular practicing dentists and veterinarians are treated same as physicians under these rules and regulations, except the amount of alcohol is two gallons for the calendar year instead of five.

Seventeenth—Transfer of Permits

West Virginia State permits shall not be transferred from persons, companies or corporations holding same, to another, but the same may be transferred from one address to another by returning to the Commissioner the permit to be transferred with the request in writing that it is desired that said permit be corrected so as to contain the new location of the holder.

Eighteenth

All resident permit holders should give the number of their West Virginia State permit in ordering alcohol or alcoholic preparations.

Nineteenth

The holders of permits shall keep their places of business and stocks open to inspection at all times by Federal, State, County and Municipal officers having authority to enforce the prohibition laws.

Twentieth

These Rules and Reguations are subject to change at such time the Commissioner may deem necessary and without notice.

(And on another day, to-wit, at a District Court of the United States for the Southern District of West Virginia, at Charleston, in said District, on January 17, 1931.)

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF SUBMISSION—Oct. 26, 1931

This cause came on for hearing before a statutory Court of three judges, duly convened by the Honorable George W. McClintic, United States Judge for the Southern District of West Virginia, by calling to his assistance the Honorable Elliott Northcott, Judge of the Circuit Court of Appeals for the Fourth Circuit, and the Honorable William E. Baker, Judge of the District Court of the United States for the Northern District of West Virginia, pursuant to section 266 of the Judicial Code, upon the application of McCormick & Co., Inc., a corporation, and Durham Bros., Co., Inc., a corporation, plaintiffs in the above entitled cause, for an interlocutory injunction, pursuant to plaintiff's bill of complaint, praying an interlocutory and final decree enjoining and restraining the enforcement by the defendant W. G. Brown, State Commissioner of Prohibition of the State of West Virginia, and the defendant

Howard B. Lee, Attorney General of the State of West Virginia, of certain rules, orders and regulations published and made by the said State Commissioner of Prohibition of the State of West Virginia, under the terms and provisions of which the plaintiffs and those on whose behalf they sue are required to secure from the said State Commissioner of Prohibition permits and pay therefor an annual fee of Fifty Dollars, before they are allowed to sell and ship their products in interstate commerce to licensed dealers in West Virginia, on the ground that said rules and regulations of the State Commissioner of Prohibition [fol. 41] violate the interstate commerce clause of the United States Constitution.

And it appearing to this court that notice of plaintiffs' application for the interlocutory injunction prayed for herein, has been served upon and accepted by the defendants W. G. Brown, State Prohibition Commissioner of West Virginia, and Howard B. Lee, Attorney General of West Virginia, and that such notice has been served upon and accepted by Wm. G. Conley, Governor of West Virginia, which notice and the acceptance thereof by the persons hereinabove set out, is ordered to be filed herein, and the defendants W. G. Brown, State Commissioner of Prohibition, and Howard B. Lee, Attorney General of West Virginia, appeared in open court, either in person or by counsel, and acknowledged the sufficiency of said notice and service upon said defendants, and the Attorney General of West Virginia pursuant to authority duly given to him by Wm. G. Conley, Governor of West Virginia, appeared in open court and on behalf of the said Wm. G. Conley, as Governor of West Virginia, did also acknowledge the sufficiency of said notice and service thereof upon the said Wm. G. Conley, as Governor of West Virginia.

Thereupon, the court, upon consideration of plaintiffs' verified bill of complaint and exhibits filed therewith, and the verified answer of the defendants and exhibits filed herewith, and the general replication to said answer, and the affidavits of James M. Doran, G. F. Beyer, John W. Herscher, Robert B. Lewis, Ray Yancey, John Glassford, Willoughby N. McCormick and T. A. Borradaile, which affidavits are hereby ordered to be filed, and the arguments of counsel, takes time to consider.

(The affidavits of James M. Doran et als., referred to in the foregoing order, are in the words and figures as follows:

[fol. 42] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JAMES M. DORAN—Filed Oct. 26, 1931

DISTRICT OF COLUMBIA,
City of Washington, ss:

On this 19th day of December, 1930, personally appeared before me, James M. Doran, who, being sworn in due form of law, did depose and say:

First. That he is the Commissioner of Industrial Alcohol of United States Treasury Department.

Second. That the records of the Bureau show that the following named firms and corporations have qualified as permittees to secure and use commercial alcohol for the purpose of using the said alcohol in the manufacture of articles for non-beverage use:

Abbott Laboratories, North Chicago, Illinois.
The Abner Royce Co., Cleveland, Ohio.
Allied Drug Products Co., Chattanooga, Tennessee.
American Druggists Syndicate, Long Island City, N. Y.
Arden, Elizabeth, New York City, N. Y.
Bailey & Son, James, Baltimore, Maryland.
Baltimore Drug Co., The, Baltimore, Maryland.
Blackstone Manufacturing Co., Newark, N. J.
Baltzly Co., The, Canton, Ohio.
Berninghaus Co., The Eugene, Cincinnati, Ohio.
Brown Barber Supply Co., Steubenville, Ohio.
Buckholz & Maus, Pittsburgh, Pa.
Cambridge Barber Supply, Cambridge, Ohio.
Edlis Barber's Supply Co., Pittsburgh, Pa.
Jackson Chemical Co., P. W., Indianapolis, Ind.
Lang & Co., J., Baltimore, Maryland.
Lynch, Chas., J., Portsmouth, Ohio.
Mabsco Barber Supply Co., Pittsburgh, Pa.
Puritan Drug Mfg. Co., Columbus, Ohio.

Marinello Co., Inc., New York City.
Stearns & Co., Frederick, Detroit, Michigan.
Strother Drug Co., Lynchburg, Virginia.
Ayer, Inc., Harriet Hubbard, New York City, N. Y.
Canton-Akron Barber Supply Co., Canton, Ohio.
Southern Grocery Co., Inc., Roanoke, Va.
Koch Vegetable Tea Co., Dr., Winona, Minn.
Lady Grey Co., Chicago, Ill.
Lange Co., De Pere, Wis.
Lazelle, Perfumer, Newburgh, N. Y.
Leggett & Co., Francis H., New York City, N. Y.
Lehn & Fink, Inc., Bloomfield, N. J.
Liebenthal Bros. Co., The, Cleveland, Ohio.
Lilly & Co., Eli, Indianapolis, Indiana.
Loewy Drug Co., Inc., Baltimore, Md.
Loveland Co., Wm. H., Binghamton, N. Y.
Lucky Tiger Remedy Co., Kansas City, Mo.
Maltbie Chemical Co., The, Newark, N. J.
[fol. 43] McConnon & Co., Winona, Minn.
McCormick & Co., Baltimore, Md.
McKesson & Robbins, Bridgeport, Conn.
Merrell Co., The Wm. S., Cincinnati, Ohio.
Merrill Drug Co., E. J., Ironton, Ohio.
Milson Co., The, Cincinnati, Ohio.
Mulford Co., H. K., Philadelphia, Pa.
Muth Bros. & Co., Baltimore, Md.
National Drug Co., The, Philadelphia, Pa.
Nelson, Baker & Co., Detroit, Michigan.
Norwich Pharmacal Co., The, Norwich, N. Y.
Ogilvie Sisters, New York City, N. Y.
Orr, Brown & Price Co., The, Columbus, Ohio.
Owl Drug Co., The, San Francisco, California.
Park & Sons Co., Ltd., John D., Cincinnati, Ohio.
Parke, Davis & Co., Detroit, Michigan.
Parry Vegetable Compound Co., Mansfield, Ohio.
Pa. Manufacturers & Extract Co., S. S., Pittsburgh, Pa.
Personeni, Inc., Joseph, New York City, N. Y.
Pinaud, Inc., New York City, N. Y.
Pitman-Moore Co., Indianapolis, Indiana.
Plough Chemical Co., Inc., The, Memphis, Tenn.
Powers-Taylor Drug Co., Richmond, Virginia.
Rawleigh Co., The W. T. Freeport, Illinois.
Roanoke Drug Co., Inc., Roanoke, Virginia.

Roosa & Ratliff, Cincinnati, Ohio.
Royal Mfg. Co., of Duquesne, Inc., Duquesne, Pa.
Sauer Co., C. F., Richmond, Virginia.
Sayman Products Co., T. M., St. Louis, Mo.
Schieffelin & Co., New York City, N. Y.
Seeman Bros., Inc., New York City, N. Y.
Selig Company, The, Atlanta, Ga.
Severa Co., W. F., Cedar Rapids, Iowa.
Sharp & Dohme, Baltimore, Md.
Shipley-Massingham Co., Pittsburgh, Pa.
Southern Chemical Co., Petersburg, Virginia.
Sprague, Warner & Co., Chicago, Illinois.
Squibb & Sons, E. R., New York City, N. Y.
Standard Pharmaceutical Corp., Baltimore, Md.
Stansbury Drug Co., The, Middleport, Ohio.
Lewis-Bros., Inc., New York City.
The Newton Products Co., Cincinnati, Ohio.
Yowland Co., Geo. H., Cincinnati, Ohio.
[fol. 44] Park & Son Co., Ltd., T. H., Cincinnati, Ohio.
Rice, Lewis A., Frederick, Md.
Spencer Perfume Co., Inc., South Bend, Ind.
Vantine Co., A. A., New York City.
Wabash Baking Powder Co., Wabash, Ind.
Whitmer Co., H. C., Columbus, Ind.
Woodworth, Inc., Rochester, N. Y.
Yardley & Co., Inc., New York City.
Yates Drug & Chemical Co., New York City.
F. Ad. Richter Co., Brooklyn, N. Y.
Blair Labofatories, Dr., Lynchburg, Virginia.
Budeker Drug Co., Richmond, Virginia.
Boneilla Laboratories, Inc., Indianapolis, Indiana.
Bowman Bros. Drug Co., The, Canton, Ohio.
Boyer Chemical Laboratory, Inc., The, Chicago, Illinois.
Brewer & Co., Inc., Worcester, Massachusetts.
Brooks Co., Inc., The, Attica, N. Y.
Burnett Co., Joseph, Boston, Mass.
California Perfume Co., New York City, N. Y.
Carlova, Inc., Binghamton, New York.
Carr, Owens & Co., Inc., Baltimore, Md.
Chamberlain Medicine Co., Des Moines, Iowa.
Cincinnati Soap Co., The, Cincinnati, Ohio.
Colgate-Palmolive-Peet Co., Chicago, Ill.
Commercial Laboratories, Inc., Newark, N. Y.

Coty, Inc., New York, N. Y.
Dana Company, The, Parkersburg, West Virginia.
Davis Manufacturing Company, Inc., Knoxville, Tenn.
DePree Co., The, Holland, Michigan.
Devore Mfg. Co., The, Columbus, Ohio.
Dill Co., Inc., The, Norristown, Pa.
D'Orsay Perfumeries, Corp., New York City, N. Y.
Earle, Marie, Inc., New York City, N. Y.
Fahrney & Sons Co., Dr. Peter, Chicago, Ill.
Federal Products Co., The, Cincinnati, Ohio.
Fitch Co., The, F. W., Des Moines, Iowa.
Floral Products, Inc., New York, N. Y.
Foley & Co., Chicago, Ill.
Frank Tea & Spice Co., The, Cincinnati, Ohio.
Fries & Fries Co., The, Cincinnati, Ohio.
Gandolfi & Co., L., New York, N. Y.
Gibson, Inc., Guy T., New York City, N. Y.
[fol. 45] Gilbert Bros. & Co., Inc., Baltimore, Md.
Gilmore Drug Co., W. J., Pittsburgh, Pa.
Gilpin Co., Henry B., Baltimore, Md.
Guerlain Perfumery Corporation, New York City, N. Y.
Hale, Justis Drug Co., The, Cincinnati, Ohio.
Harley Co., E. C., Dayton, Ohio.
Heberling Co., G. C., Bloomington, Ill.
Herb Medicine Co., The, Springfield, Ohio.
Herpicide Co., Inc., The, Detroit, Michigan.
Hollander Bros. Drug Co., Rankin, Pa.
Hopper, Inc., Edna Wallace, Chicago, Ill.
Houbigant, Inc., New York City, N. Y.
House of Tre-Jur, Inc., New York City, N. Y.
Howard Drug & Medicine Co., The, Baltimore, Md.
Hudnut, Richard, New York City, N. Y.
Makrauer & Son, Inc., Andrew, Pittsburgh, Pa.
Jergens Co., The Andrew, Cincinnati, Ohio.
Joncaire, Inc., A., Boston, Mass.
Mercer Barber Supply Co., Sharon, Pa.
Nashville Barber Supply Co., Nashville, Tenn.
Old Reliable Hannon Supply Corp., Cincinnati, Ohio.
Pabst & Kohler, Columbus, Ohio.
Pennsylvania Perfumery & Barber Supplies, Pitts-
Brown Bros., Co., Wm. H., Baltimore, Md.
Purnell Co., H. L., Salisbury, Md.
Reeves Barber Supply Co., A., Richmond, Va.

Semones-Hunt Co., Knoxville, Tenn.
Southern Barber's Supply Co., Roanoke, Va.
Bailey Grocery Co., C. L. Marietta, Ohio.
Beall & Steele Drug Co., Steubenville, Ohio.
Bingham Co., The Chas A., Cleveland, Ohio.
Brown Bros., Co., Wm. H. Baltimore, Md.
Cooper & Sons, T. J., Winchester, Va.
Dyke-Keys Co., Steubenville, Ohio.
Kauffman-Lattimer Co., Columbus, Ohio.
Styron, Beggs Co., The, Newark, Ohio.
Sweet Mfg. Co., Inc., The, Pittsburgh, Pa.
Thayer Pharmacal Co., Chicago, Ill.
Tornello & Co., C., Youngstown, Ohio.
Triner Co., Joseph, Chicago, Ill.
United Drug Co., Boston, Mass.
Upjohn Co., The, Kalamazoo, Mich.
Vadsco Sales Corp., New York City, N. Y.
[fol. 46] Vail Bros., Inc., Philadelphia, Pa.
Virginia Dare Extract Co., Brooklyn, New York.
Vogler Drug Co., The Alfred, Cincinnati, Ohio.
Warner & Co., Inc., Wm. R., New York City, N. Y.
Watkins Co., The J. R., Winona, Minn.
Westphal, Paul, New York City, N. Y.
Weyer, George H., Kansas City, Mo.
Wildroot Co., Inc., The, Buffalo, New York.
Williams Co., The, J. B., Glastonbury, Conn.
Wyeth & Bros., Inc., John, Philadelphia, Pa.
Dorn, John G., Sandusky, Ohio.
Engels & Krudwig Co., The, Sandusky, Ohio.
Hammer Co., The A. J., Agent for Beaulieu Vineyards Co., Cleveland, Ohio.
American Oil Co., The, Baltimore, Md.
Baltimore Gas Engineering Corp., The, Charleston, W. Va.
Bourjois, Inc., New York, N. Y.
Calvert Drug Co., The, Baltimore, Md.
Cole Chemical Co., St. Louis, Mo.
Knapp Extract Co., Cleveland, Ohio.
Quaker Maid Co., Inc., The, New York, N. Y.
Reid, Murdoch & Co., Chicago, Ill.
Smith Higgins Co., Inc., Johnson City, Tenn.
Tru-Lax Products Co., Newark, N. J.

Wuppermann Angostura Bitters Agency, Inc., J. W., New York, N. Y.

Third. That all of the products manufactured by the said firms and corporations are required by the National Prohibition Act and the regulations promulgated thereunder to be prepared in accordance with approved formulae and samples duly submitted to the Bureau of Industrial Alcohol for approval, and the preparations sold to the general public are required to be unfit for beverage purposes.

James M. Doran.

It witness whereof I have hereunto set my hand and notarial seal on the day and year first above written.

Marguerite S. Banks, Notary Public. My commission expires 12/1/35. (Seal.)

[fol. 47] In United States District Court

[Title omitted]

Affidavit of G. F. Beyer—Filed October 26, 1931

District of Columbia,
City of Washington, ss:

On this 19th day of December, 1930, personally appeared before me, G. F. Beyer, who being sworn in due form of law, did depose and say:

First. That he is the chemist in charge of the Washington Laboratory of the Bureau of Industrial Alcohol in the United States Treasury Department, and he has had — years' experience in analysing articles containing ethyl alcohol, and determining whether the formulae of such articles comply with the requirements of the laws of the United States prohibiting the sale and transportation of intoxicating liquors, and that it is his duty so to do.

Second. That under the laws of the United States no permit will be granted for the manufacture of any product for medicinal, toilet and culinary purposes the transportation of which in interstate commerce or otherwise would be in violation of any of the laws of the United States pro-

hibiting the sale or transportation in interstate commerce or otherwise of intoxicating liquors.

Third. That under the law and the regulations and based upon his experience in passing on the formulae of such articles and examination of samples of the finished articles, no more undenatured alcohol is authorized under permit in bond for use or actually used therein than the quantity necessary for the extraction or solution of the elements [fol. 48] contained therein and for the preservation of the articles and in addition thereto the finished products must be unfit for beverage purposes or for intoxicating beverage purposes and may legally be used only for the purpose for which authorized.

Fourth. That under the law and regulations and based upon his experience in passing upon formulae and examining samples no more specially denatured alcohol may be used than necessary for the accomplishment of the desired purpose in the proposed process and the finished articles must be unfit for use for beverage purposes, the alcohol not readily recoverable by saponification, distillation, or other process, and may be used only under permit and bond for the purpose for which authorized. Such specially denatured alcohol or the articles made therewith may not legally be used for beverage purposes, or intoxicating beverage purposes.

(Signed) G. F. Beyer.

In witness whereof I have hereunto set my hand and notarial seal the day and year first above written.

(Signed) Norman G. Ellis, Notary Public. Notary Public, D. C., My commission expires Aug. 14, 1933. (Notarial Seal).

In United States District Court

[Title omitted]

Affidavit of John W. Herscher—Filed October 26, 1931

[fol. 49] State of West Virginia,
County of Kanawha, To-wit:

On this 12th day of January, 1931, personally appeared before me, Judith B. Crippen, a notary public of the State

of West Virginia, in and for the County of Kanawha, John W. Herscher, who, being sworn in due form of law, did depose and say that he is president of Hubbard Grocery Company, Inc., and that he is familiar with their business involving the sale of flavoring extracts, toilet articles, perfumes, and other merchandise containing ethyl alcohol, and that he knows of his own knowledge that the said Hubbard Grocery Company, Inc., is forbidden by the rulings of the Commissioner of Prohibition of West Virginia from buying, selling, or offering for sale any such flavoring extracts, toilet articles, perfumes, and other merchandise containing ethyl alcohol, manufactured by any person, firm or corporation within or without the State of West Virginia, unless such person, firm, or corporation has a permit and license issued by the Commissioner of Prohibition of West Virginia to manufacture said articles, and that the Commissioner of Prohibition of West Virginia, or his agents, have threatened and do threaten to seize and confiscate any such articles which said Hubbard Grocery Company, Inc., should buy, sell, or offer for sale, unless the manufacturers of said articles hold said permit.

(Signed) John W. Herscher, Affiant.

Taken, subscribed and sworn to before me this 12th day of January, 1931. My commission expires December 17, 1937. (Signed) Judith B. Crippen, Notary Public in and for Kanawha County, West Virginia.

[fol. 50] In United States District Court

[Title omitted]

Affidavit of Robert B. Lewis—October 26, 1931

State of New York,
County of New York,
City of New York, ss:

Robert B. Lewis, being duly sworn, deposes and says:

That he is the Chief Chemist of Lewis Bros., Inc., a corporation of the State of New York, having its principal

place of business at 26 East 125th Street, in the Borough of Manhattan, City, County and State of New York.

That he has had about twenty years' experience as a chemist, and for eight years has been charged with the supervision of formulae and processes of manufacture employed by the said corporation, and is thoroughly familiar with all formulae and processes so employed which involve the use of alcohol; that all of the products containing alcohol manufactured by the said corporation are manufactured in accordance with formulae approved by the Bureau of Industrial Alcohol (formerly Bureau of Prohibition), and are unfit for beverage purposes and are, therefore, non-potable because of the essential oils and other denaturants employed in the said products, any person attempting to use the said products, for beverage purposes would suffer nausea, gastric irritations, or severe illness, and the said preparations are, and under Federal regulations are required to be, so unpalatable, irritating, and nauseous, that they cannot be consumed as intoxicating beverages.

(Sd.) Robert B. Lewis.

[fol. 51] Sworn to before me this 10th day of January, 1931. (Sd.) Louis W. Feuss. Louis W. Feuss, Notary Public, Queens Co., No. 547. Certificate filed in N. Y. Co. Clerk's No. 252. New York County Register's No. 2F209. Queens County Register's No. 171. Term expires March 30, 1932. (Notarial Seal.)

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF RAY YANCEY—Filed October 26, 1931

STATE OF MICHIGAN,
City of Detroit,
County of Wayne, ss:

On this 9th day of January, 1931, personally appeared before me, Notary Public of the State of Michigan, in and for the City of Detroit, County of Wayne, Ray Yancey,

who, being sworn in due form of law, did depose and say that he is the Chief Chemist of The Herpicide Company, a corporation of the State of Michigan, having its principal place of business at 63-71 Milwaukee Avenue, West; that he has had ten years' experience as a chemist and for five years has been charged with the supervision of formulae and processes of manufacture employed by the said cor- [fol. 52] poration, and is thoroughly familiar with all formulae and processes so employed which involve the use of alcohol; that all of the products containing alcohol manufactured by the said corporation are manufactured in accordance with formulae approved by the Bureau of Industrial Alcohol (formerly Bureau of Prohibition), and are unfit for beverage purposes and are, therefore, not intoxicating liquors.

Because of the essential oils and other denaturants employed in the said products, any person attempting to use the said products for beverage purposes would suffer nausea, gastric irritations, or severe illness, and the said preparations are, and under Federal regulations are required to be, so unpalatable, irritating, and nauseous, that they cannot be consumed as intoxicating beverages.

(Sgd.) Ray Yancey. (Signature of Affiant.)

As witness my hand and seal this 9th day of January, 1931.

(Sd.) Ralph E. Lewis, (Notary Public.) My commission expires January 1st, 1933. (Notarial Seal.)

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOHN GLASSFORD—Filed October 26, 1931

[fol. 53] STATE OF MARYLAND,
City of Baltimore, ss:

On this 10th day of January, 1931, personally appeared before me, a Notary Public of the State of Maryland, in and for the City of Baltimore, John Glassford, who being sworn in due form of law did depose and say:

That he is a graduate of the New York College of Pharmacy (later included in Columbia University) and received from the said institution the degree of Doctor of Pharmacy; that he has pursued the calling of pharmacist and chemist for a period of twenty (20) years, and for a period of five (5) years has been Chief Chemist and Superintendent of the Drug and Flavoring Extract Departments of McCormick & Co., Inc., and that in the course of his work with McCormick & Co., Inc., he is required to supervise the formulae of all products containing alcohol manufactured by McCormick & Co., Inc., and that he is charged with superintending their manufacture and ascertaining that they are made in accordance with the said formulae; that he is thoroughly familiar with all of the products containing alcohol manufactured by said McCormick & Co., Inc.; that he knows of his own knowledge that all of said products are manufactured in accordance with formulae approved by the Bureau of Industrial Alcohol (formerly Bureau of Prohibition), and that all of said products have been passed upon by the said Bureau as unfit for beverage purposes and, therefore, are not intoxicating liquors; that of his own knowledge he knows that the said products are unfit for beverage purposes, because the essential oils and other denaturants included in said products are of such a nature that the consuming of said products for beverage purposes would involve serious gastric irritations or disorders, or nausea, and, in some cases, if persisted in, serious illness; that none of said products are sold for beverage purposes, but they are sold strictly for medicinal, toilet and culinary purposes.

(Sd.) John Glassford.

In witness whereof I have hereunto set my hand and [fol. 54] Notarial Seal on the day and year first above written.

(Sd.) Richard T. Pilling, Jr., Notary Public. (Notarial Seal.)

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF WILLOUGHBY M. McCORMICK—Filed October 26, 1931

STATE OF MARYLAND,
City of Baltimore, ss:

On this fourteenth day of January, 1931, personally appeared before me, a Notary Public of the State of Maryland in and for the City of Baltimore, Willoughby M. McCormick, who being sworn in due form of law, did depose and say that he is the President of McCormick & Co., Inc., one of the plaintiffs in the above entitled case, and that he knows of his own knowledge that the said McCormick & Co., Inc., sells annually in the State of West Virginia, merchandise containing alcohol, of a value of not less than Thirteen Thousand Dollars ($13,000.00), and in order that the said corporation may sell the said merchandise, it is required, under the rulings of the Commissioner of Prohibition of West Virginia, to carry a wholesale liquor dealer's license and to pay an annual fee of Fifty Dollars ($50.00), and that the annual profit derived from the sale of said merchandise is not less than Fifteen Hundred Dollars ($1,500.00), and [fol. 55] that the right of the said corporation to ship the said merchandise into West Virginia in interstate commerce is worth more than Three Thousand Dollars ($3,000.00).

Willoughby M. McCormick.

As witness my hand and notarial seal the day and year first above written.

Richard T. Pilling, Jr., Notary Public. (Seal.)

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF T. A. BORRADAILE, ETC.—Filed October 26, 1931

T. A. Borradaile being first duly sworn deposes and says:

1. He is a chemist, residing in Charleston, West Virginia; that *that* he has had training and experience in his work as follows: He graduated from Miami University, 1908, with the degree of A. B., majoring in chemistry; he

taught chemistry in high schools for about five years, engaged in chemical work at Tampa, Florida, for four years in handling petroleum products, in 1917 was engaged with Warren-Klipstein Chemical Company of Carteret, N. J., and South Charleston, West Virginia, in the production of chlorine products, was City Chemist of Charleston, West Virginia, 1919-25, and was employed as Chemist and [fol. 56] Inspector of the State Department of Prohibition of West Virginia 1925-29.

Affiant says that as City Chemist his work included the examination by chemical analysis of foods, drugs and liquors, and that in the years 1923 and 1924 he was frequently called upon to make chemical analyses and tests of alcoholic preparations submitted to the State Department of Prohibition for classification under its permit system; and that in 1925 he was employed by said Department as Chemist and Inspector in its work of regulating and restricting the sale of alcoholic products offered for sale under the prohibition laws of the state.

While employed in the positions aforesaid, affiant made chemical tests and analyses of all classes of "liquors" offered for sale and passed upon and classified by the Department. These preparations included patent and proprietary medicines, N. F. and U. S. P. formulae, flavoring extracts, hair tonics and lotions, toilet waters and perfumes, tonics, cordials, etc., etc. In addition to such tests affiant was frequently called to testify in cases in which the City or State was prosecuting for sale and possession of liquors, and the question as to whether the particular "liquor" or preparation containing ethyl alcohol would produce intoxication would arise. For the past five or six years affiant has had frequent experiences in such cases in several courts in the state.

2. By reference to the records in the State Department of Prohibition affiant says that McCormick & Company, Inc., of Baltimore, Maryland, under date of April 2, 1924, filed a list of alcoholic products with the State Commissioner of Prohibition of West Virginia, and made application at the same time for a permit to sell said products in the State; that affiant assisted in the examination and classification of said products, and that a permit was issued

to said applicant. The original application, a copy of said list and a copy of said permit is here filed as part hereof and marked respectively, "Exhibit 1", "Exhibit 2" and "Exhibit 3", "with affidavit of T. A. Borradaile".

Affiant further states that said McCormick & Company, Inc., has by application renewed its said permit for each year since 1924 up to and including the year 1930; that in [fol. 57] so far as affiant is informed the same line of products has been offered for sale under said permit each year; that the various preparations in said list falling in "Class A", "Class B" and "Class C" of "Prohibition Department Ruling Number Five", are such preparations as will produce intoxication and drunkenness; that affiant bases this statement on the alcoholic content, the potability and the physiological effect of the final product, and upon his actual experience and observation that said preparations are intoxicating in fact.

T. A. Borradaile.

Subscribed and sworn to before me this 10 day of January, 1931. S. E. Childress, Notary Public. My commission expires Oct. 28, 1940.

EXHIBIT 1 WITH THE AFFIDAVIT OF T. A. BORRADAILE

S. P. C. No. 26

Application by Wholesale Dealer in Liquors as Defined in Section 1 for Permit to Purchase and Sell Same for Medicinal, Pharmaceutical, Scientific, and Mechanical Purposes

April 2nd, 1924.

To the State Commissioner of Prohibition:

The undersigned McCormick & Co., Incorporated. Whose business is Manufacturer. Located at Baltimore, Maryland hereby makes application for a permit to purchase and sell at wholesale, liquors as defined in Section 1, for medicinal, scientific, pharmaceutical and mechanical purposes.

It is hereby certified that the undersigned has not within one year prior to the date hereof violated the terms of any

[fol. 58] permit issued under the Prohibition Law of West Virginia, and that this applicant will observe the terms of any permit issued upon this application and the provisions of all laws of the State relative to the acts for which same is issued.

McCormick & Co., Incorporated. Willoughby N. McCormick, Pres.

STATE OF MARYLAND,
City of Baltimore, To wit:

Subscribed and sworn to before me this 2nd day of April, 1924.

M. Marie Shriver, Notary Public. (Seal.)

EXHIBIT 2 WITH THE AFFIDAVIT OF T. A. BORRADAILE

April 2, 1924.

Extracts:

	Alcohol content, approximately
Allspice	82%
Almond, Bee Brand	36%
Almond, Clover Brand	32%
Almond, Silver Medal	23%
Banana, Bee Brand	45%
Banana, Clover Brand	42%
Banana, Silver Medal	42%
Cherry, Bee Brand	25%
Cherry, Clover Brand	17%
Cinnamon, Bee Brand	85%
Cinnamon, Clover Brand	65%
Clove, Bee Brand	67%
Fragoma, an Imitation Vanilla	35%
Fragoma, Tonka type	30%
[fol. 59] Ginger Ale	47%
Lime, terpeneless	52%
Lemon, Clover Brand	78%
Lemon, Bee Brand	80%
Lemon, Con-Bak	78%
Lemon, Silver Medal	29%
Lemon, terpeneless	52%

Extracts:

	Alcohol content, approximately
Maple, Bee Brand	31%
Nutmeg, Bee Brand	72%
Orange, terpeneless	52%
Orange, Bee Brand	80%
Orange, Clover Brand	78%
Pistachio, Bee Brand	47%
Peppermint, Bee Brand	85%
Pineapple, Bee Brand	47%
Pineapple, Clover Brand	38%
Pineapple, Silver Medal	38%
Raspberry, Bee Brand	15%
Raspberry, Clover Brand	12%
Raspberry, Silver Medal	12%
Root Beer, Bee Brand	6%
Rose, Bee Brand	94%
Strawberry, Bee Brand	28%
Strawberry, Silver Medal	17%
Sarsaparilla	20%
Violet, Bee Brand	82%
Vanilla, Bee Brand	42%
Vanilla, Crescent Brand	42%
Vanilla, Clover Brand	42%
Vanilla, Con-Bak Brand	42%
Vanilla, Silver Medal	14%
Wild Cherry	39%
Wintergreen	70%
Peach, Bee Brand	25%
Peach, Clover Brand	25%
Soda Foam	6%
Fruitall Lime Flavor	15%
[fol. 60] Fruitall Lemon Flavor	15%
Fruitall Orange Flavor	15%

Colors:

Green, Bee Brand	10%
Kake	14%
Pink, Bee Brand	10%
Red, Bee Brand	8%
Violet, Bee Brand	10%
Yellow, Bee Brand	10%

Tinctures:

	Alcohol content, approximately
Iodine	84%
Iron	62%
Asafœtida	82%
Aconite	67%
Arnica	40%

Cologne:

Clover Blossom	35%

Drugs:

Antiseptic, Reliable Brand	60%
Cactoria	3%
Cough Syrup, White Pine and Tar	10%
Diarrhœa Remedy	60%
Death to Pain	54%
McCord's Magic Medicine (for stock)	80%
Syrup of Figs, Compound	6%
Toothache Drops	25%
Turlington's Balsam	80%
Vermifuge	2½%
Aromatic Spirits of Ammonia	66%
Spirits Camphor	85%
Paregoric	40%
Spirits Nitre (drug trade only)	90%
Hoffman's Anodyne	65%
Godfrey's Cordial	5%
Bateman's Drops	48%
Witch Hazel	15%
Bay Rum, denatured	47%

[fol. 61] EXHIBIT 3 WITH THE AFFIDAVIT OF T. A. BORRADAILE

S. P. C. No. 28. State Permit No. 5375

Wholesale Dealer's Permit under the State Prohibition Law

STATE OF WEST VIRGINIA:

Office of State Commissioner of Prohibition, Charleston, West Virginia

McCormick & Company, Inc., whose location is (City) Baltimore, (County) ——, (State) Maryland, whose busi-

ness is that of Manufacturers, having made application for a permit as a wholesale dealer, to purchase, sell and keep for sale and transport liquors in accordance with the provisions of Chapter 32-a of the Code of West Virginia, and not otherwise, which said application is now on file in my office and the required fee paid.

Now, therefore, I, W. G. Brown, State Commissioner of Prohibition, by virtue of authority by law in me vested, do hereby issue this permit, thereby authorizing the said McCormick & Company, Inc., Light-Barre & Charles Sts., Baltimore, Maryland, as a wholesale dealer to purchase, sell and keep for sale and transport liquors as defined in Section 1 of Chapter 32-a of the Code of West Virginia, and in accordance with the provisions of the Prohibition Law of this State and of the United States. Sales are authorized to holders of State Permits, only.

This permit shall be in force from and after the date thereof and until December 31, 1924, unless sooner annulled.

Given under my hand at the City of Charleston, State of West Virginia, this January 1st, 1924.

—— ——, State Commissioner of Prohibition.

[fol. 62] In United States District Court, Southern West Virginia

In Equity. No. 2866

McCormick & Co., Inc., a Corporation, and Durham Bros. Co., Inc., a Corporation, Plaintiffs,

vs.

W. G. Brown, State Commissioner of Prohibition of the State of West Virinia, and Howard B. Lee, Attorney General of the State of West Virginia, Defendants

Final Decree—Dec. 3, 1931

This cause having been submitted on the 21st day of October, 1931, to the undersigned sitting under the authority of Section 266 of the Judicial Code as amended (28 U. S. C. A., Section 380), upon motion of the plaintiffs for an interlocu-

tory injunction, as set out in an order of submission entered in this cause on October 26, 1931, the court upon consideration of the plaintiffs' verified bill of complaint and exhibits filed therewith, the verified answers of the defendants and exhibits filed therewith, and the general replication to said answers, and the affidavits of James M. Doran, G. F. Beyer, John W. Herscher, Robert B. Lewis, Ray Yancey, John Glassford, Willoughby N. McCormick and T. A. Borradaile, and the arguments of counsel, doth adjudge, order and decree that the interlocutory injunction prayed for by the plaintiffs be denied.

And thereupon, by consent of all the parties, this cause came on to be heard upon the application of the plaintiffs for a permanent injunction, and it appearing that none of the parties to this suit desire to introduce any evidence other than that presented upon the motion to grant the interlocutory injunction, the cause is by agreement of all parties submitted for final hearing upon the plaintiffs' verified bill of complaint and exhibits filed therewith, the verified answers of the defendants and exhibits filed therewith, and [fol. 63] the general replication to said answers and the affidavits of James M. Doran, G. F. Beyer, John W. Herscher, Robert B. Lewis, Ray Yancey, John Glassford, Willoughby N. McCormick, and T. A. Borradaile, and the arguments of counsel, and the court being fully advised in the premises, and being of the opinion that the plaintiffs have not shown themselves entitled to the relief prayed for in their said bill, for reasons stated in writing and filed with the record herein as part hereof, it is adjudged, ordered and decreed that the application of the plaintiffs for a permanent injunction be and the same is hereby denied, and that the plaintiffs' bill be dismissed and that the plaintiffs do pay to the defendants their costs about their defense in this behalf expended.

The plaintiffs, by counsel, having declared their intention to appeal this cause to the Supreme Court of the United States, the execution of this decree shall be stayed for a period of thirty days from the date of the entry of this order, within which time the plaintiffs may apply for said appeal. But said stay shall not be effective until the plaintiffs, or some responsible party, shall execute and file with the clerk of this court, a bond with good and sufficient se-

curity, in the sum of Five Hundred Dollars conditioned to pay the costs of said appeal.

Elliott Northcott, Judge of the Circuit Court of Appeals for the Fourth Circuit. W. E. Baker, Judge of the United States District Court for the Northern District of West Virginia. Geo. W. McClintic, Judge of the United States District Court for the Southern District of West Virginia.

[fol. 64] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

No. 2866

McCORMICK & Co., INC., a Corporation, and DURHAM BROS. Co., INC., a Corporation, Appellants,

versus

W. G. BROWN, State Commissioner of Prohibition of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, Appellees

(Argued and Submitted, at Charleston, West Virginia, on October 21, 1931)

Before Northcott, Circuit Judge, and William E. Baker and George W. McClintic, District Judges

OPINION

NORTHCOTT, Circuit Judge:

A bill in equity was filed in this Court by McCormick & Co., Inc., a Maryland corporation, engaged in the City of Baltimore in the manufacture of various products used for toilet and culinary purposes, and Durham Bros. Co., a Virginia corporation, engaged as a wholesale dealer in groceries and food products in the City of Roanoke, Virginia, as complainants, against W. G. Brown, State Commissioner of Prohibition of the State of West Virginia, and Howard B. Lee, Attorney General of that State. The suit was instituted by the complainants on their own behalf and for the benefit of numerous other non-resident manu-

facturers or wholesale dealers in commercial products containing ethyl alcohol as a necessary solvent or preservative, to secure an injunction to restrain the State Officials from requiring them to procure permits at the cost of $50.00 per annum for the sale and transportation of their goods, and from prosecuting any proceeding for their refusal to pro- [fol. 65] cure such permits.

The District Court granted the appellants a temporary restraining order, and at a later date, a preliminary injunction. By agreement of the parties, the cause was submitted for final hearing upon the same evidence introduced upon the hearing for the preliminary injunction. On the final hearing the District Court denied the application for a permanent injunction and dissolved the preliminary injunction theretofore granted.

From this action of the District Court complainants appealed to the Circuit Court of Appeals for the Fourth Circuit, which court handed down an opinion by Soper, Circuit Judge, on October 12, 1931, holding that the case was one falling within the provisions of Section 266 of the Judicial Code as amended (28 U. S. C. A., Section 380), and that it was the duty of the District Judge to convene a three-judge court to try the case in accordance with that act.

The District Judge called a three-judge court, which convened at Charleston, West Virginia, on October 21, 1931, and after argument the cause was submitted on the record as it was made up for the former hearing.

Findings of Fact

The court adopts as correct the statement in the opinion of the Circuit Court of Appeals above referred to, both as to the facts and the contentions of the parties. This statement is as follows:

"The complainants alleged that the products in question are used and usable exclusively for medicinal, mechanical, toilet or culinary purposes, and are manufactured and sold under permits issued by the United States Bureau of Industrial Alcohol, and approved by the United States Bureau of Prohibition; and that none of them contains intoxicating liquors or is fit for beverage purposes within the meaning of the laws of the United States. The State Commissioner had declared that all products purchased from non-

resident dealers, not clothed with permits, would be subject to seizure, confiscation and destruction, and the persons selling or keeping for sale the products in West Virginia would be prosecuted under the criminal laws of the State. These requirements of the Commissioner, it was charged, were without authority in law and constituted unwarranted attempts on his part to hinder and obstruct complainants' lawful interstate commerce. They asserted that the jurisdiction of the court was established because the matter in controversy exceeded in value the sum of $3,000.00, and the complainants and defendants were respectively citizens of different states; and also because the complainants sought in the suit to redress the deprivation, under color of unlawful regulation by the Commission- of Prohibition, of rights, privileges and immunities secured to the complainants by the Constitution of the United States, to wit: the right to ship and transport the products manufactured [fol. 66] or sold by them in interstate commerce free from unlawful restrictions or regulation by the Commissioner of Prohibition.

"The State officials, by answer, denied the jurisdictional allegations of the bill of complaint and asserted that all of their actions performed or threatened were authorized by certain State enactments and regulations, of which the following is a resume. A constitutional amendment, effective on and after July 1, 1914 (Constitution of West Virginia, Article 6, Section 46), prohibited the manufacture or sale of intoxicating liquor within the State, except liquors for medicinal, pharmaceutical, mechanical, sacramental and scientific purposes, and except the sale of denatured alcohol for industrial purposes under regulations to be prescribed by the Legislature. That body was enjoined to enact laws to carry the amendment into effect and laws were passed which are now codified in Chapter 60 of the Official Code of West Virginia of 1931. The word "liquors" was given a wide significance so as to include not only all kinds of intoxicating beverages, but also all liquors, mixtures or preparations, whether patented or not, which will produce intoxication. (Section 1, Article 1.) The manufacture and sale of liquors was placed under the supervision of a Commissioner of Prohibition and under such rules and regulations as he might from time to time prescribe. (Section 3,

Article 2.) No one is allowed to sell, purchase or transport any liquor without first obtaining a permit from the Commissioner of Prohibition so to do. Permits expire annually on December 31. The fee for a manufacturer's or wholesale dealer's permit is $50.00. (Section 5, Article 1.) In case of sale, in which a shipment or delivery of liquor is made by a carrier, the sale is deemed to be made in the county where the delivery is made to the consignee. (Section 4, Article 1.) Common carriers are forbidden to carry liquors into the State, and persons in the State are forbidden to receive liquors from a carrier except in case of pure grain alcohol and wine and such preparations as may be sold by druggists. (Sections 9 and 13 of Article 1). It is unlawful for any non-resident vendor to sell or furnish liquors to any person within the State when such liquors are intended by any person interested therein to be received, possessed, sold or in any manner used in violation of the State laws; and in case the delivery of the liquors is made by a carrier, the sale or furnishing is deemed to be made in the county wherein the delivery is made. (Section 11, Article 1).

"The Commissioner of Prohibition appointed under the authority of the statutes has promulgated certain regulations, wherein a non-resident manufacturer, doing business in the State, is classed and treated as a wholesale dealer of whom an annual license fee of $50.00 is required. A wholesale dealer is declared to be one whose business is that of selling at wholesale, ethyl alcohol in any form, whether pure, medicated or denatured, and wine as permitted and supervised by the federal government, or selling as aforesaid any liquor mixture or preparation, whether patented or not, which will produce intoxication or come within the definition of liquors in Section 1, Article 1 of the State law. The regulations of the Commissioner also classify alcoholic preparations, the sale of which is prohibited in the State defining those which may be sold by the drug trade only under permit, those which may be sold by all dealers under permit, and those which may be sold by all dealers without permit. Goods of the sort manufactured and sold by the complainants are placed in the category of those which may be sold by dealers only under permit.

"Thus it appears that the State statutes cover the activities of non-resident vendors, when the liquors sold or

furnished by them are intended to be used in violation of the local law, and the term "liquors" has been given a significance sufficiently broad to include the products of the [fol. 67] complainants; and the Commissioner's regulations have classified non-resident manufacturers of liquor doing business in the State as wholesale dealers required to take out an annual permit before sending merchandise into the State, and have classified the goods of the kind made or sold by complainants as those which may be sold only under permit.

"Upon their allegations, the complainants prayed an injunction against the Commissioner and the Attorney General to restrain them from requiring complainants by legal proceedings to take out permits and pay the license fees, and from causing the complainants to be arrested for refusal to procure permits, and from interfering in any manner with complainants' business. An order upon the defendants to show cause why a preliminary injunction should not be granted, and also a temporary restraining order pending the hearing on the preliminary injunction were prayed. Thereupon the District Judge issued a temporary restraining order which seems to have been kept alive by consent until the hearing and determination of the motion for preliminary injunction. The final decree recites that this motion was submitted to the court on the pleadings, exhibits and affidavits of the parties, whereupon the court decreed that the preliminary injunction be granted until its further order. By consent of all the parties, the application for a permanent injunction was then submitted upon the same pleadings, exhibits and affidavits which were considered upon the motion for preliminary injunction; and the court, being of the opinion that the complainants had not shown themselves entitled to the relief prayed, adjudged in the same decree that the application for permanent injunction should be denied and the preliminary injunction theretofore granted should be dissolved. The complainants appealed.

"The Complainants concede the constitutional validity of the statutes of West Virginia but complain that the State officials have wrongfully interpreted them to authorize the regulations of the Prohibition Commission and the actions injurious to the complainants which he threatens to take. The right of the State to exercise a measure of

control over the interstate commerce in intoxicating liquor within its borders is conceded by complainants, by reason of the provisions of the Wilson Act of August 8, 1890 (27 U. S. C. A. 121), the Webb-Kenyon Act of March 1, 1913 (27 U. S. C. A. 122), and the Reed Amendment of March 4, 1917 (27 U. S. C. A. 123); but it is contended that the term "Intoxicating liquors" was used in the same significance in these statutes as in the National Prohibition Act and hence must be limited to liquors containing ½ of 1% or more of alcohol by volume, which are fit for beverage purposes (27 U. S. C. A. Section 4). Hence it is said that Congress has given the State no authority to regulate, control or forbid the interstate commerce in other products containing alcohol, and the traffic in them is lawful and unrestricted if the laws and regulations of the federal government are obeyed. In addition it is contended that West Virginia has passed no statute applicable to the business of the complainants because they sell only to licensed local dealers, and there is no intent on the part of any interested person to violate the State law. And so complainants reach the conclusion that the regulation of the Commissioner requiring them to take out permits and pay license fees for doing business in West Virginia is without warrant of authority in either federal or State law; and constitutes an unwarranted exercise of the power to regulate interstate commerce committed to Congress by the Constitution of the United States.

"These contentions are strongly combatted by the representatives of the State who claim that the Commissioner of Prohibition is supported by both federal and state legislation in every official act affecting the complainants which he has performed or threatened to perform. They contend also that the District Court was without jurisdiction to [fol. 68] hear and determine the case on the ground that the matter in controversy does not exceed $3,000.00 as required by statute 28 U. S. C. A. 41 (1), since the license fee was only $50.00 and it was not clearly shown that a business equal in value to the jurisdictional amount was involved. It is not entirely clear under the State laws and regulations that the Commissioner of Prohibition has not the power in his discretion to refuse a permit to a nonresident manufacturer or wholesale dealer who offers to pay the license fee. Moreover, there are cases which hold that when a license to do business is concerned, the amount

involved is not measured by the size of the burden thus imposed but by the value of the business interfered with. Southern Expr. Co. v. Mayor, &c. of Ensley, 116 Fed. 756; City of Hutchinson v. Beckham, 118 Fed. 399; Board of Trade v. Cella Commission Co., 145 Fed. 28; Jewel Tea Co. v. Lee's Summit, 198 Fed. 532; Campbell Baking Co. v. City of Maryville, 31 Fed. (2) 466. Compare McNeill v. Southern Ry. Co., 202 U. S. 543; Glenwood Light & Water Co. v. Mutual Light, Heat & Power Co., 239 U. S. 121; Packard v. Banton, 264 U. S. 140; Western & Atl. R. v. Railroad Commission, 261 U. S. 264".

Conclusions of Law

An examination of the authorities cited in the opinion of the Circuit Court of Appeals on the question of jurisdiction leads us to the conclusion that this court has jurisdiction. The amount is not measured alone by the size of the license fee required to be paid but also by the value of the right to do business. This is clearly the law where the State Commissioner of Prohibition is, as here, given the exercise of some discretion as to the granting or refusing to grant the permit.

The pertinent portion of the West Virginia Statute on this point will be found in Section 5, Article 1, Chapter 60 of the Official Code of West Virginia, and reads as follows:

"* * * provided, that no one shall manufacture, sell, keep for sale, purchase or transport any liquors, as defined in Section 1 of this article and as herein excepted, without first obtaining a permit from the Commissioner of Prohibition so to do." * * *

As to whether the imposition of the requirement to secure the permit and pay the fee therefor is in violation of the Federal Constitution and laws and a burden on interstate commerce, it was admitted in the argument that if the articles for the sale of which the permit is required properly came under the definition of "liquors" as used in the West Virginia Statute, then the state has the right to regulate or restrict their sale within its borders.

Section 1 of Article 1 of Chapter 60, Official Code of West Virginia reads as follows:

"The word 'liquors', as used in this chapter, shall be construed to embrace all malt, vinous or spirituous liquors, wine, porter, ale, beer or any other intoxicating drink, mixture or preparation of like nature; and all malt or brewed drinks, whether intoxicating or not, shall be deemed malt liquors within the meaning of this statute; and all liquids, mixtures or preparations, whether patented or not, which will produce intoxication, and all beverages containing one-[fol. 69] half of one per cent, or more of alcohol, by volume, shall be deemed spirituous liquors, and shall be embraced in the word 'liquors', as used in this statute."

A careful study of this and the related sections of the West Virginia Code (see opinion of Circuit Court of Appeals) leads us to the conclusion that the articles in question come within the definition of "liquors" as defined by the Legislature of West Virginia. This has been the holding of the West Virginia courts. State v. Muncey, 28 W. Va. 494; State v. Durr, 69 W. Va., 251; State v. Good, 56 W. Va. 215; State v. Henry, 74 W. Va. 72. That the Federal courts are bound by the interpretation of a State Statute by the highest court of that state is unquestioned.

Pursuant to provisions of the State Statutes (Section 3, Article 2, Chapter 60) the Prohibition Commissioner is empowered to prescribe rules and regulations governing the sales of the articles in question. The Commissioner, in his regulations, has placed "liquors to be sold by the drug trade only under permit", in Class "B", which class requires the permit and fee complained of. Regulations of this character, when not in conflict with the express statutory provisions, have the force and effect of law. (United States v. Butler, 49 Fed. (2) 52, and authorities there cited.)

The various acts of Congress, with regard to State Prohibition laws that preceded the enactment of the Eighteenth Amendment and the National Prohibition Act, were not repealed by the Amendment and the Act. (Washington v. Miller, 255 U. S. 422.) These included the Wilson Act, Webb-Kenyon Act and the Reed Amendment, and these acts taken together with the amendment and the National Prohibition Act give the states concurrent power to enforce prohibition and do not invalidate the prohibition laws of a state. These laws employ different definitions and penal-

ties in aid of the amendment. The states are not prohibited from passing their own enforcement laws so long as they do not make legal that which the federal laws make illegal. Within proper bounds and as long as they do not conflict with the federal law or unduly burden interstate commerce the laws of West Virginia are determinative of the question [fol. 70] here involved. In prohibiting the sale of liquor transported into the state from another state, except under permit from the State Commissioner of Prohibition, the West Virginia State laws, as enacted and enforced at this time, are valid.

The right of the State Commissioner of Prohibition to require the permit under the laws of West Virginia is not superseded or affected by the fact that such dealers hold their permit from the Federal Government. Federal courts will not interfere with the internal affairs of a state when sought to be regulated under State Constitutions and Statutes, unless the necessity for such interference is unquestioned. Such a case is not here presented, and the court is of the opinion that the relief prayed for should be denied and the injunction not granted.

Elliott Northcott, U. S. Cricuit Judge. W. E. Baker, U. S. District Judge. Geo. W. McClintic, U. S. District Judge.

[fol. 71] IN UNITED STATES DISTRICT COURT

In Equity. No. 2866

McCORMICK & Co., INC., a Corporation, and DURHAM BROS. Co., INC., a Corporation, Plaintiffs,

vs.

W. G. BROWN, State Commissioner of Prohibition of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, Defendants

ORDER ALLOWING APPEAL—Dec. 21, 1931

The appellants, the plaintiffs in the above styled cause, and each of them, having prayed for the allowance of appeal in this cause to the Supreme Court of the United States

from the decree made and entered in the above styled suit by the District Court of the United States for the Southern District of West Virginia, with three judges sitting therein under the provisions of Section 266 of the Judicial Code as amended, (28 U. S. C. A., 380), on the 3rd day of December, 1931, and from each and every part thereof, and having presented their petition for appeal, assignments of error, and prayer for reversal pursuant to the statute and rules of court in such cases made and provided, which are hereby ordered to be filed;

It is now here ordered that an appeal be, and that the same is hereby, allowed to the Supreme Court of the United States from the District Court of the United States for the Southern District of West Virginia, in this cause, as provided by law, and it is further ordered that the clerk of this court shall prepare and certify a transcript of the record, including all the proceedings had and papers and exhibits filed in this cause, and shall transmit the same to the Supreme Court of the United States, according to law, as prayed for;

And it is further ordered that security for costs on appeal be fixed in the sum of Five Hundred Dollars.

[fol. 72] Elliott Northcott, United States Circuit Judge. W. E. Baker, United States District Judge. Geo. W. McClintic, United States District Judge.

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed December 21, 1931.

The Petition of McCormick & Co., Inc., a corporation, and Durham Bros. Co., Inc., a corporation, plaintiffs herein, respectfully represents:

That the plaintiffs and those on whose behalf they sue are aggrieved by the judgment and decree rendered herein on the 3rd day of December, 1931, in favor of the defendants, refusing to issue a permanent injunction as prayed for in the bill of complaint in this case, and the said plaintiffs,

for the reasons specified in the assignment of errors filed herein, desire to appeal from said decree to the Supreme Court of the United States.

Wherefore your petitioners pray that said appeal may be allowed, on their giving bond in the amount to be fixed by this Court; that said appeal may be made returnable to the Supreme Court of the United States, according to law; and that a transcript of the record, proceedings, papers and exhibits upon which said decree was rendered, duly authenticated, be sent to said Supreme Court of the United States.

And your petitioner prays for all general and equitable relief.

Philip C. Friese, Rummel, Blagg & Stone, Solicitors for Plaintiffs.

[fol. 74] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Dec. 21, 1931

The plaintiffs above named pray for an appeal from the decree of this court in the above styled action, denying to them a permanent injunction as prayed for, to the Supreme Court of the United States, and assign for error:

1. The District Court of the United States for the Southern District of West Virginia, with three judges sitting as provided by Section 266 of the Judicial Code as amended (28 U. S. C. A., S. 380), erred in refusing the prayer of plaintiffs' bill for a permanent injunction.

2. Said district Court further erred in refusing to enjoin the defendants W. G. Brown, State Commissioner of Prohibition of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, from requiring or attempting to require by legal or equitable process, or otherwise, the plaintiffs in this cause and those on whose behalf they sue, to secure permits from the defendant, W. G. Brown, Commissioner of Prohibition of the State of West Virginia, and to pay for said permits an

annual license fee, before being permitted to sell and transport their products in interstate commerce to dealers in West Virginia licensed by the said State Prohibition Commissioner to sell said products.

3. Said District Court further erred in refusing to hold that the action of the defendant W. G. Brown, State Prohibition Commissioner of the State of West Virginia, in requiring the plaintiffs and those on whose behalf they sue, to secure from said State Prohibition Commissioner per- [fol. 75] mits and pay therefor an annual license fee, before being permitted to sell and transport their products in interstate commerce to dealers in West Virginia licensed by said Prohibition Commissioner to sell said products, constitutes an unlawful interference with the interstate business of the plaintiffs.

4. Said District Court further erred in holding that under the provisions of the Wilson Act, Webb-Kenyon Act, Reed Amendment, the Eighteenth Amendment, to the Constitution of the United States, Volstead Act, and Section 46, Art. 6 of the Constitution of West Virginia, and Chapter 60, Official Code of West Virginia, the defendant W. G. Brown, State Prohibition Commissioner of West Virginia, was warranted in requiring the plaintiffs and those on whose behalf they sue, to secure from said defendant, Prohibition Commissioner, annual permits and to pay therefor an annual license fee, before being allowed to sell and transport their products in interstate commerce to dealers in West Virginia holding licenses from the defendant, State Prohibition Commissioner, to sell the same.

For which errors the said plaintiffs pray that the said decree of the District Court of the United States for the Southern District of West Virginia, with three judges sitting as aforesaid, entered on the 3rd day of December, 1931, in the above styled cause be reversed, with directions to enter a decree granting a permanent injunction as prayed for in the plaintiffs' bill of complaint filed herein.

Philip C. Friese, Rummel, Blagg & Stone, Solicitors for Plaintiffs.

[fols. 76 & 77] Bond on appeal for $500.00, approved and filed December 21, 1931, omitted in printing.

[fol. 78] IN UNITED STATES DISTRICT COURT

[Title omitted]

WAIVER OF CITATION—Filed December 21, 1931

McCormick & Company, Inc., a corporation, and Durham Bros., Inc., a corporation, having filed their assignments of error, petition for appeal and bond for costs, and having been allowed an appeal to review the above styled cause in the Supreme Court of the United States, W. G. Brown, State Commissioner of Prohibition of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, do herby waive the issuance and service of a citation herein, and do enter their appearance in the Supreme Court of the United States.

Dated this 21st day of December, 1931.

H. B. Lee, Attorney General of West Virginia. W. G. Brown, State Commissioner of Prohibition of West Virginia.

[fol. 79] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO PREPARATION OF TRANSCRIPT—Filed December 21, 1931

It is hereby stipulated and agreed by and between the solicitors for the respective parties that the transcript of record to be filed in the Supreme Court of the United States, pursuant to the appeal heretofore allowed herein, shall include the following:

The bill of complaint and exhibits filed therewith.

The answer and exhibits filed therewith.

The affidavits of James M. Doran, G. F. Beyer, John W. Herscher, Robert B. Lewis, Ray Yancey, John Glassford, Willoughby N. McCormick, and the affidavit of T. A. Borradaile and exhibits filed therewith.

The order of submission.

The order denying the interlocutory injunction.

The order denying the permanent injunction.

The opinion of the Court.

The petition for appeal.
The assignments of error.
The order allowing appeal.
The appeal bond.
The waiver of citation of appeal.
Stipulation as to preparation of transcript of record.
Dated December 21, 1931.

Maurice J. Crocker, Rummel, Blagg & Stone, Solicitors for Plaintiffs. H. B. Lee, Attorney General; R. Dennis Steed, Asst. Atty. Gen.; W. G. Brown, Solicitors for Defendants.

[fol. 80] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 81] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Jan. 12, 1932

Come now the appellants in the above entitled cause and state that the points upon which they intend to rely in this court in this case, are as follows:

Point 1. That the United States District Court for the Southern District of West Virginia, with three judges sitting, as provided by Section 266 of the Judicial Code as amended (28 U.S.C.A., Section 380) erred in refusing to grant a permanent injunction against the defendants W. G. Brown, State Commissioner of Prohibition of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, restraining said defendants from requiring, in accordance with certain rules and regulations published and enforced by said defendant State Prohibition Commissioner, the appellants and those on whose behalf they sue, to secure an annual permit and pay therefor a fee of $50.00, before being permitted to sell and transport in interstate commerce products containing ethyl alcohol [fol. 82] for the manufacture and sale of which they hold permits issued by the United States Bureau of Industrial Alcohol, to dealers in West Virginia holding license from

the defendant State Prohibition Commissioner to receive, store and sell such products, because such action of defendants constitutes an unlawful interference with the rights guaranteed to appellants by the Commerce Clause of the Constitution of the United States.

Point 2. That the United States District Court for the Southern District of West Virginia erred in holding that under the provisions of the Wilson Act, Webb-Kenyon Act, Reed Amendment, the Eighteenth Amendment to the Constitution of the United States, Volstead Act, Section 46, Article 6 of the Constitution of West Virginia and Chapter 60 of Official Code of West Virginia the defendants were warrented in requiring the appellants and those on whose behalf they sue, to secure from the said defendant State Prohibition Commissioner annual permits and to pay therefor an annual permit fee, before being allowed to sell and transport their products containing ethyl alcohol in interstate commerce to dealers in West Virginia holding licenses from the defendant State Prohibition Commissioner to receive, store and sell the same, because such requirements constitute an unlawful interference with the interstate commerce rights guaranteed to appellants by the Commerce Clause of the Constitution of the United States for:

(a) Appellants' products are not "intoxicating liquors" within the meaning of the federal statutes pertaining to the interstate transportation of "intoxicating liquors".

(b) Appellants' products are not "intoxicating liquors" within the state prohibition laws of West Virginia.

(c) The federal laws pertaining to the interstate transportation and the sale of "intoxicating liquors" apply only where there is an intent to violate the law of the state into which the "intoxicating liquor" is being transported, and [fol. 83] in the instant case the interstate sales and shipments of appellants' products are made only to dealers in West Virginia licensed by the State of West Virginia to receive and sell the same.

(d) Under the provisions of Chapter 60, Official Code of West Virginia, the prohibition laws of West Virginia apply only to non-resident sales when the products mentioned in said chapter are intended by any person interested therein

to be received, possessed, sold or in any manner used in violation of the prohibition laws of West Virginia. The provision in Section 11, Article 1, Chapter 60, Official Code of West Virginia that in the case of interstate sales the furnishing or delivery of the product sold shall be deemed to be made in the county where delivery is made to the consignee, his agent or employe, applies only where there is an intent to violate the laws of West Virginia, and in this case appellants have no such intent because they sell and transport their products in interstate commerce only to dealers in West Virginia licensed by that state to receive and sell the same.

(e) If under the federal statutes and laws, the State of West Virginia could pass a law affecting interstate commerce to the extent contended by the defendant State Prohibition Commissioner in this case, the State of West Virginia has not seen fit to avail itself of this power but has limited the application of the West Virginia prohibition laws to sales where there is an intent to violate the prohibition laws of West Virginia.

Philip C. Friese, Arthur G. Stone of Rummel, Blagg & Stone, Counsel for Appellants.

Designation of Parts of Record to be Printed

Appellants further state the entire record as filed in this court is to be printed by the clerk for the hearing of the case, which record is made up of the following papers:

The bill of complaint and exhibits filed therewith.

The answer and exhibits filed therewith.

[fols. 84 & 85] The affidavits of James M. Doran, G. F. Beyer, John W. Herscher, Robert B. Lewis, Ray Yancey, John Glassford, Willoughby N. McCormick, and the affidavit of T. A. Borradaile and exhibits filed therewith.

The order of submission.

The order denying the interlocutory injunction.

The order denying the permanent injunction.

The opinion of the Court.

The petition for appeal.

The assignments of error.

The order allowing appeal.

The appeal bond.

The waiver of citation of appeal.
Stipulation as to preparation of transcript of record.
Certificate of Clerk of District Court.

Philip C. Friese, Arthur G. Stone, of Rummel, Blagg & Stone, Counsel for Appellants.

A copy of this paper ("Statement of Points to be Relied Upon" and "Designation of Parts of Record to be Printed") was this day served upon the Appellees, W. G. Brown, State Commissioner of Prohibition of the State of West Virginia, and Howard B. Lee, Attorney General of the State of West Virginia, service of which is hereby acknowledged on their behalf this 7th day of January, 1932.

W. G. Brown, State Commissioner of Prohibition of State of West Virginia. H. B. Lee, Attorney General of State of West Virginia.

[fol. 86] [File endorsement omitted.]

Endorsed on cover: File No. 36,413. S. West Virginia D. C. U. S. Term No. 599. McCormick & Company, Inc., and Durham Bros., Inc., appellants, vs. W. G. Brown, State Commissioner of Prohibition of the State of West Virginia, et al, etc. Filed December 29, 1931. File No. 36,413.